226 GOVERNMENT'S EXHIBIT D.

Government of the Province of Benguet.

Office of the Provincial Governor.

BAGUIO, BENGUET, P. I., *Sep.* 11, 1903.

J. H. Wilson, Clerk of the Court of Land Registration, Manila, P. I.

SIR: I have the honor to return to you the papers in regard to registration of title of Mateo Cariño, covering certain lands in the province of Benguet. It is impossible for me to make the certificate requested in yours of August 11. The facts that I can learn, regarding this matter are as follows:

Mateo Cariño is regarded as a wealthy man among the Igorrotes, he has a very good house that in itself will probably be covered by the valuation of 4000 pesos, he has rice fields that are quite valuable, he claims jurisdiction over mountain lands for herding, he has great herds of cattle and many ponies. All of this he claims possession of besides this particular land which is described in the enclosed papers. On all his property, without description or specification, he has paid taxes into the municipality of Baguio, Benguet. In 1901 25 pesos, in 1902 25 pesos, this being ½% tax on an avaluation of 5000 pesos. In 1903 he paid 20 pesos, this being ½% of an avaluation of 4000 pesos. He has no titles whatever to any land, although he has been in undisputed possession of the land on which he lives for nearly thirty years. I cannot therefore certify that he has ever paid any tax on the property herein described, beside which I consider that it is within my province
227 as Governor of Benguet, to enter into some detail regarding the several transactions connected with the history of this particular land-deal: First, under the Spanish Government, regardless of the royal decree May 14th 1867 Art. 8 it was the practice of the Spaniards to give no title, of any nature whatever, to the Igorrotes, therefore there are none extent. Igorrote chieftains like Mateo, simply by force of character, maintained their dominant sway over large tracks of land in the province of Benguet. The boundary lines of these lands were sharply defined, as between the different chiefs, and the territory of this particular bucnan or headman, extended over a great many miles from the eastern boundary of the land herein described to the Irisan on the west, nearly 20 kilometer- in length. Other chiefs maintained domination or possession of like extensive domains. During the insurrection of the Filipinos against the United States, General Bell was given the command of all this part of the north. He personally made reconnoissance throughout this province, he became convinced from his personal observations in other parts of the world and his experience in the tropics, that in the future it will be inevitable that a great army post for health and recuperation would be established in this mountain province. So thoroughly was he possessed of this idea that he himself selected the land on which this post should here-

after be established. He reported these facts to his superiors an
urged the proposition to such an extent that, so far as local la
would permit, it seemed to be an established fact that the Gover
ment would make this reservation. Before taking all thes
228 steps, General Bell ascertained from all sources in his powe
the fact that there were no titles to these grounds in law
that there were no squatters' rights in these grounds to the exte
of any improvements whatever or any marks or signs showing th
the ground was inhabited or claimed for the purpose of inhabitatio
Now, at this time, comes a certain Mr. Clark, who, taking advanta
of the native custom, allot-ing lands to different chiefs, has th
Igorrote make a claim of possession of this particular track of lan
which, because the Military desired it, has become suddenly in hi
mind, valuable. The proceedings from that date to this are, o
course, within your reach, but the preceding history which I hav
given you, as above, is traditionary, traditionary but authentic an
is not on paper where you could possibly touch it in your court
The land herein described is within that track of land reserved b
the Philippine Commission in Act No. 636.

Yours Respectfully, WILLIAM F. PACK,
Provincial Governor, Benguet.

Defendant's Exhibit "D."

229 Department of Justice of the Philippine Islands.

Office of the Attorney General.

MANILA, P. I., *June* 25, 1904.

SIR: I enclose herewith the deposition of Mr. P. S. Black, Actin
Chief of the Bureau of Public Lands, taken in Manila before M
Charles C. Cohn on June 4, 1904. I have delayed transmitting th
to you on account of delay in securing the petitioner's exhibit- C
R, S, T, U, V, W, X, Y and Z. I enclose said exhibits and als
the Government's exhibit- E and F.

Please file these papers in the Cariño case and deliver same t
the Judge immediately on his return from Cervantes.

Respectfully, A. BASSETT,
Assistant Attorney.

To the Clerk of the Court of Benguet Provinces, Baguio, Benguet

230 DEFENDANT'S EXHIBIT E. Charles C. Cohn, Notary Public.

JULY, 1895.

No. of order in the entry.	Day of entry.	Data of document. Day.	Month.	Year.	Number of origin.	Where from.	Extract.	Distribution of the divisions.
*	*	*	*	*	*	* *	* *	
5839	13	6	July	1895	5	From the direction	Office of the Junta of Laguna, Stating that no expediente has been sent out dur the month of June last.	Juntas.
5840	"	3	"	"	94	From the same.	Same of same of Negros Oriental. Showing the selling price of 6.46 fixed for sales of lands in that province to be excessive.	Lands.
5841	"	5	"	"	266	From the same.	Office of Commandant of Benguet. Transmitting denouncement of lands belonging to the Igarote Laboaso @. Piraso.	do.
5842	"	"	"	"	267	From the same.	Same as to Mateo Corantes.	do.
5843	"	"	"	"	268	From the same.	Same as to Mateo Carifio.	do.

231

CEC

DEPARTMENT OF INTERIOR,
BUREAU OF PUBLIC LANDS, MANILA.

I, P. S. Black, Acting Chief of the Bureau of Public Lands, do hereby certify that I am the Official custodian of a book of records of the former General Inspectorate of Forests entitled "Libro de Entrada de la Inspección General de Montes," containing the entries made during the period October 6, 1894 to July 17, 1895, and that the copy attached hereto is a true and literal exemplification of the successive entries found under numbers 5839, 5840, 5841, 5842 and 5843, on page 791 of the said book.

Signed in Manila, this third day of June nineteen hundred and four.

P. S. BLACK,
Acting Chief, Bureau of Public Lands.

On the back appears the following:

I hereby certify that on this 20th day of July, 1904, at 11.00 a. m., there has been received at this office, by mail, the foregoing document.

WM. M. BROWER,
Clerk Mountain Judicial District Court.

232 DEFENDANT'S EXHIBIT F. Charles C. Cohn, Notary Public.

620. SEPTEMBER, 1897.

No. of order in the entry.	Day of entry.	Data of document. Day.	Month.	Year.	Number of origin.	Where from.	Extract.	Distribution of the divisions.
*	*	*	*	*	*	* *	* *	*
*	*	*	*	*	*	* *	* *	*
6617	18	16	Sept.	1897	...	From the direction	Transcription from office of the Secretary of the Governor General, stating that under no circumstances may lands in Benguet — ceded until it is shown definitely who should occupy the Sanatorium and other properties of the same.	Lands.

233 DEPARTMENT OF INTERIOR,
BUREAU OF PUBLIC LANDS, MANILA.

CEC

I, P. S. Black, Acting Chief of the Bureau of Public Lands, do hereby certify that I am the official custodian of a book of records of the former General Inspectorate of Forests, entitled "Libro de entrada de la Inspección General de Montes, containing the entries made during the period from January 11, 1897 to February 10, 1898, and that the copy attached hereto is a true and literal exemplification of an entry found under number 6617, on page 620 of the said book.

Signed in Manila, this third day of June, nineteen hundred and four.

P. S. BLACK,
Acting Chief, Bureau of Public Lands.

On the back appears the following:

I hereby certify that on this 20th day of July, 1904, at 11.00 a. m., there has been received at this office, by mail, the foregoing document.

WM. M. BROWER,
Clerk Mountain Judicial District Court.

234 GOVERNMENT'S EXHIBIT G.

No. 79, Bureau of Archives, Manila.

Stamp reading Province of Benguet—Secretary. Folio 24—No. 10—

Promise of sale of a piece of rural property executed by its proprietor Mateo Cariño, in favor of Mr. Metcalf A. Clarke. At Baguio, the 3rd October, 1901, before me, Charles Alvares Sobral, acting Secretary of the Province of Benguet, and *ex-officio* Notary Public in and for the same, with residence at Baguio, appeared: On the one part Mr. Metcalf A. Clarke, merchant, of full age, married, and resident in Manila, with personal cedula No. A35356, issued by the Administration de Hacienda Publica de Manila; and on the other part, Mateo Cariño, proprietor, of full age, married and resident of Baguio, capital of the province of Benguet, without personal cedula by reason of the abolition of law No. 111 of the Civil Commission of the United States in the Philippines—and both parties possessing in my judgment the legal capacity requisite for the execution of this document of promise to sell, and nothing to the contrary appearing, they freely and spontaneously declare:—First:—Mateo Cariño declares that he is in possession of real estate situated in the sitios of Ipit and Lubas, municipal jurisdiction of the town of Baguio, Province of Benguet, without name, the area of which approximates 152 hectares, being bounded, according to the annexed map, on the north partly by the stream of Lubas, partly by the road to Loakan, the lands of the Igorote Piraso, and the lands of the Igorote Mateo Carantes; on the east by the lands of the Igorote Pisla; on the south by lands belonging to the jurisdiction of the Barrio of Loakan, jurisdictional lands of the sitio of Pias; and on the west partly by the jurisdictional lands of the sitio of Pias and

235 partly by the stream Lubas in its southerly direction; declaring that this land is free from all charges and encumbrances, and that he possesses the same exclusively by inheritance from his parents as shown by the possessory information which on the 21st of February, 1901, he presented to the Judge of First Instance of La Union and Benguet, possessory information which was approved in all its parts and inscribed in the registry of property at folio second on the reverse of the sheet, volume first of the Ayuntamiento of Baguio, the capital of the Province of Benguet; realty No. 2 inscription No. 1, San Fernando 11th March, 1901; signed Nemesio Bonoan, Register of Property of La Union and Benguet—in accordance with the marginal note at the foot of the possessory information mentioned above and official copy of which is in my possession by way of deposit made by Sr. Mateo Cariño to me, I issued the necessary receipt, the same being deposited as guaranty to Mr. M. A. Clarke, who asked for it for better security of the contract, which is now being executed.

2. Said Sr. Mateo Cariño promises to sell this land to Mr. M. A. Clarke as soon as he obtains from the Government of the United States, or its representatives in the Philippines, real and definitive

title to said land in accordance with the laws in this respect enacted by the Civil Commission of the United States in the Philippines.

3. Mr. M. A. Clarke agrees to pay to Mr. Mateo Carino the sum of 100 Mexican Dollars with these presents as earnest money, and by way of consideration for this obligation and upon the signing of the contract of final sale the sum of 5900 Mexican dollars, which with the 100 dollars delivered today will make 6000 Mexican dollars as the price which he will pay to *the* Sr. Mateo Cariño for the acquisition of the land referred to.

236 4. The parties hereto agree that Mr. Metcalf A. Clarke shall take preventative immediate possession of the land of Mateo Cariño, exercising upon said land the rights inherited to the real proprietor until such time as Sr. Mateo Cariño may have obtained real title to the same upon which Mr. M. A. Clarke will obtain possessioñ absolute and definitive to the said land upon payment of the stipulated price; but if after 60 days from the time when Sr. Mateo Cariño shall have obtained the real title to said land Mr. M. A. Clarke shall not have paid the balance of the 6000 pesos owing as the price of the sale of the lands in question, then, in such case, Mr. M. A. Clarke will lose the 100 pesos which he delivered as earnest money to Sr. Mateo Cariño and will surrender at the said time the permanent and peaceful possession of said lands free from charge and obligation.

5. The parties hereto agree that Sr. Mateo Cariño shall, as soon as he obtains real title above mentioned, inform Mr. M. A. Clarke of the fact of having obtained the same, and that the term of 60 days within which the balance of the purchase price is to be paid will be counted from the day on which Mr. M. A. Clarke receives said notification, Sr. Mateo Cariño promising on his part to obtain said real title and to notify Mr. M. A. Clarke of its acquisition immediately after the Civil Commission promulgates the acts in regard to property and title, which it must decree.

Declared and executed in the presence of the necessary witnesses: Sr. Augustin Villenueva y Basco and Sr. Sinforiano Madayag é Brillantes, both clerks of full age and residents of this capital. And being informed of the rights which the law confers as to the reading of this document, proceeded in accordance therewith to its reading, and the notary having interpreted the English language in

237 view of the fact that I am official interpreter, and there being also interpreted into the Igor-ote language by my actuary, of which language he is official interpreter, the parties hereto ratified the same and all signed except the party, Sr. Mateo Cariño, who, by reason of the fact of his not knowing how to sign, made in my presence a mark with the tip of his index finger of his right hand. To all of which and to the knowledge, profession and residences of the parties and witnesses I certify.—in parenthesis—the words "el—presto—y—los—del—de—(he—offered—a n d—those—of the—of) are cancelled. Interlineations:—the words "los—presentó—é—con—el—terreno—á" (he—presented—them—with—t h e—land—to) stand. M. A. Clarke. Mateo Cariño, mark. As witnesses of the mark: Augustin Villenueva—Juan Mateo Cariño—flourish—Sinfo. Madayag, flourish—Carlos Alvarez Sobral. The notarial seal. I

issued the first copy to Mr. M. A. Clarke on two sheets common paper, sealed paper having been abolished from use in this province of Benguet by law 111 of the Civil Commission of the United States in the Philippine Islands, which copy I have issued on this same day of the execution of the original. I so certify. Carlos Alvarez Sobral. (5 lines omitted.)†

NOTE.—On the 11th day of November, 1901, Mr. Metcalf A. Clarke, the purchaser, desiring that the wife of the other party, Mateo Cariño, should also sign this document, the said wife, named Bayoso, signed in my presence, making a mark with the index finger of her right hand by reason of the fact that she did not know how to sign. As to which I certify. Bayosa, mark. Carlos Alvarez Sobral.—

I issued the second copy in favor of Mr. M. A. Clarke upon the application of his attorneys, Messrs. Coudert Brothers, of
238 Manila, in five sheets of common paper, written on the typewriter. The use of stamped paper having been abolished in this province of Benguet by law 111 of the Civil Commission in the Philippine Islands on the 18th day of April, 1903. P. Ewagar, Provincial Secretary and *ex-officio* Notary Public of Benguet. I certify that the foregoing copy is literally taken from its original, which is filed in this office, and I seal and sign the same at Manila this 6th day of June, 1904. Manuel M. Miranda, Acting Chief Bureau of Archives. *Ex-officio* Notary Public. Seal of the Bureau of Archives.

Indorsement on the above: I hereby certify that this 13th day of June, 1904, there was received in this office the foregoing document. William M. Brower, Clerk of the Judicial District of Tierras Altas.

239 GOVERNMENT'S EXHIBIT "H."

MANILA, P. I., *June* 7, 1904.

Deposition of Manuel M. Miranda, Acting Chief of the Bureau of Archives, taken in pursuance of an order of the Court of First Instance of the Province of Benguet, in the case entitled *In re* Application of Mateo Cariña for the registration of title to lands.

A. Bassett, Assistant Attorney, appeared for the Government, and J. W. Haussermann of Coudert Bros. appeared for the applicant, Mateo Cariña.

The witness, having been duly sworn, testified as follows:

By Mr. BASSETT:

Q. What is your name?
A. Manuel M. Miranda.
Q. Where do you live?
A. At No. 60 Calle Legaspi, Intramuros.

[† In pencil in copy.]

Q. What is your business?

A. At present Acting Chief of the Bureau of Archives.

Q. In your capacity as the Acting Chief of the Bureau of Archives, have you made a search for a petition or an expediente presented by Mateo Cariño to the Commandante of the Province of Benguet, at any time since the year 1880?

A. I have made a search.

Q. And what was the result of your search?

A. I did not find any. All the expedientes we had there in regard to composition and sale of lands by the Government have been transferred to the Bureau of Public Lands. There were about twelve thousand expedientes from all the provinces.

Q. Have you made a search in the Bureau of Archives for letters and all documents which might relate to this matter?

A. Yes.

Q. And what did you find?

A. Nothing relative to Mateo Cariño.

240 Q. Did you make a search through the Official Gazette which has been published since 1894, to see whether there had been published therein a notice that Mateo Cariño had filed an application for the composition of lands?

Mr. HAUSSERMANN: Objected to as incompetent, irrelevant and immaterial, as calling for the conclusion of the witness of the contents of Official Gazettes which are now in existence and which are the best evidence of what they contain.

Ans. Since 1894. I have searched them carefully and have found nothing. Up to 1897 and 1898.

Mr. HAUSSERMANN: I move that the answer be stricken out for the reason that the witness' testimony indicates that he is testifying as to the contents of papers and official records which are in existence and are the best evidence of their contents.

(By Mr. H.:)

Q. What Official Gazettes did you examine?

A. From 1894 to 1898.

Q. When did you examine them?

A. Last month.

Q. Where did you examine them?

A. In my office. Repeatedly and by several persons.

Q. Did you personally examine each one of the Official Gazettes for those years?

A. Some of them were looked up by others, while I looked at some of them.

Q. Then you did not examine all of them?

A. What I went over was also gone over by others.

Q. And those books which you and your office force examine are still in existence in your office?

A. The books are in existence in my office now, and the persons also.

Counsel for applicant renews his motion to strike out all of that

part of the testimony of the witness relating to an examina-
241 tion of the Official Gazettes made by himself or any other person, and that part of his testimony which purports to give to the court the contents of said Gazettes, for the reason that the testimony shows that the witness is testifying from an examination made of certain Official Gazettes which are now in existence, and a portion of which only were personally examined by the witness, the books themselves and documents examined being the best evidence of their contents.

By Mr. BASSETT:

Q. Were all of these Gazettes which you have testified were examined in your office, examined by yourself and other employés of the Bureau of Archives who were there for that purpose?

A. I looked for them myself and for fear I had overlooked anything I had them examined by others. The greater part of them.

Q. But were all of the Gazettes from 1894 to 1898 examined in your office by yourself and by other employés of that office who were there for that purpose?

A. I looked at one while the others were examining other books.

Q. Who are the others that you refer to?

A. Other employés of mine.

Q. And what is their occupation?

A. They are clerks in the office. Old Government employés of the Spanish time.

Mr. HAUSSERMANN:

Q. Do you remember what particular books you examined personally?

A. Absolutely all I did not examine, but I looked at one which has been re-examined while I examined the others. Almost all. The last list there is is in May. It is certainly not there, because it has been well searched.

Q. But you will not say to the Court that you have examined them all personally in order to be able to tell the contents of all those books?

A. I can assure positively that it is not there.

242 Q. Personally?

A. I have seen all books except one personally, but I am certain it is not there because more than one person has searched them. It has been searched and looked over several times. If I were not sure that what was said was true, I would not have certified to it.

Q. Tell us what book it was that you did not examine?

A. I believe it was the last half year of 1894. It was in somebody else's hand while I was going over the rest of them.

Q. But all the other books you examined personally?

A. Yes, all.

Q. So you cannot testify excepting from the examination by the others as to the contents of the books for the last half of 1894?

A. I can assure that it is all right, because more than one person looked it up.

Q. From your own personal knowledge?
A. No. If I did not personally examine it I would not testify to it.
MANUEL M. MIRANDA.

CITY OF MANILA, *Philippine Islands, ss:*

The foregoing deposition was taken before me on the above mentioned date, and the questions and answers were taken by a stenographer and transcribed by him. The deposition was read by the witness, after which he stated it was correct, and signed it in my presence. And I certify that I am not interested in the case nor related to any one of the parties. Exhibited cedula No. 229071 dated Apr. 12-1904 & collected by City Assessor of Manila.

C. A. SOBRAL,
Notary Public.

On the back appears the following:

I hereby certify that on this 13th day of June, 1904, at 2.00 p. m., there has been received at this office, by mail, the foregoing document.
WM. M. BROWER,
Clerk Mountain Judicial District Court.

243 UNITED STATES OF AMERICA, *Philippine Islands:*

In the Court of First Instance, Mountain District, Province of Benguet.

In the Matter of the Application of MATEO CARIÑO for the Registration of Title to Public Lands in Benguet.

Deposition of Mr. P. S. Black, Acting Chief of the Bureau of Public Lands, taken before Mr. Charles C. Cohn, Notary Public.

244 UNITED STATES OF AMERICA, *Philippine Islands:*

In the Court of First Instance for the Mountain District.

In the Matter of the Application of MATEO CARIÑO for the Registration of Public Lands in Benguet Province.

Deposition.

Deposition of Mr. P. S. Black, taken before Mr. Charles C. Cohn, Notary Public. Mr. James W. Duncan, stenographer, duly sworn. Mr. P. S. Black, Acting Chief of the Bureau of Public Lands, duly sworn.

Deposition of P. S. Black, Acting Chief of the Bureau of Public Lands of the Philippine Islands, taken at the office of Coudert Brothers, 86 Calle Rosario, Manila, P. I., on this fourth day of June, nineteen hundred and four, by and in pursuance of the order of the Court of First Instance for the Mountain District, in the matter pending before said Court, entitled *"In re* application of Mateo Cariño for the registration of title of public lands."

The Government appearing by Mr. A. Bassett, Assistant Attorney; and the applicant, Mateo Cariño, appearing by Mr. John W. Haussermann of the firm of Coudert Brothers.

245 Mr. P. S. BLACK, being duly sworn, deposes and says:

Examination by Mr. BASSETT:

Q. What is your name?
A. P. S. Black.
Q. Where do you live?
A. 463 Calle Real, Manila.
Q. What is your business?
A. Chief Clerk, Bureau of Public Lands and at present Acting Chief of the Bureau of Public Lands.
Q. Are all the expedientes filed in the different bureaus and offices of the Spanish Government concerning application for adjustment (composicion) and sale of public lands now on file in the Bureau of Public Lands?
A. They are supposed to be.
Q. Have you made an examination of the expedientes in the Bureau of Public Lands for the purpose of finding whether there was an expediente containing a petition by Mateo Cariño of Benguet Province?
A. I have.
Q. What was the result of your examination?
A. Search failed to disclose any such document.
Q. During your search did you find any record or entry in any book which shows that such an application had been made?
A. Yes, in an old Spanish book, or book left by the former Spanish Government, which appeared to be a sort of letter register, there appeared a note of some such document having been filed.
Q. Have you made a certified copy of the entry in that book?
A. Yes, sir.
Q. Is this document, marked for identification "Defendant's Exhibit E" the copy to which you have just referred?
A. Yes.

Mr. BASSETT: The Government now offers in evidence Defendant's Exhibit E.

246 Q. Did you find other entries in that book relating to the public lands of Benguet Province, or in any other book in your custody?
A. Yes, there was one other.
Q. I now show you a document marked "Defendant's Exhibit F," what is that?
A. That is a certified copy of a page from the Spanish letter book to which I previously referred.
Q. Is that Spanish letter book a part of the archives of your office?
A. Yes, sir.
Q. You are the custodian of that as Acting Chief of the Department?
A. Yes, sir.

Mr. BASSETT: The Government now offers in evidence the document previously marked for identification "Defendant's Exhibit F."
Mr. HAUSSERMANN: I desire to question the witness in refer-

ence to Exhibit F for the purpose of ascertaining its authenticity and competency.

Examination by Mr. HAUSSERMANN:

Q. Do you know by whom the entries therein was made?

A. No further than they appear to be made by a clerk in the Spanish Government in the office of the "Inspeccion General de Montes."

Q. Does said book contain any certificate from any public official of that Department under Spanish Government as to its authenticity?

A. I have not examine- the book to that extent. It has every appearance of being an authentic record.

Mr. HAUSSERMANN: I move that that part "It has every
247 appearance of being an authentic record" be stricken out, for the reason that it is giving an opinion of the witness and is not responsive to the question.

Mr. Haussermann objects to the introduction of Exhibit F for the reason that the same is incompetent, irrelevant and immaterial, and does not purport to be a copy of any official document required to be recorded in any of the archives of the Spanish Government, or its successors, the Philippine Government.

Cross-examination conducted by Mr. HAUSSERMANN:

Q. How long have you occupied the position of Chief Clerk in the Bureau of Public Lands in these Islands?

A. 14 months.

Q. State whether or not the Bureau of Public Lands contains a full and complete record of all the acts and proceedings and expedientes received and acted upon by the Director General de Montes prior to American occupation?

A. Yes, sir, the Bureau of Public Lands is supposed to contain all of such documents now in existence except those relating strictly to timber matters, which are now in the Forestry Bureau.

Q. Did you understand the question? If not, I will ask the stenographer to read the same again?

(Question repeated.)

A. I do understand.

Q. Is that the best answer that you can make?

A. Probably.

Q. I will ask you to produce the petition referred to in Exhibit E as having been made by Mateo Cariño, which is transmitted to that Bureau in 1895?

A. That petition does not appear to be in the Bureau of
248 Public Lands, and probably is not in existence.

Q. Then the Bureau of Public Lands does not contain, as it is supposed to contain, all the records of actions and expedientes received and acted upon by said Department prior to American occupation?

A. My reply is that it is supposed to contain all of those that are in existence. Some might have been destroyed and probably were.

Q. Is it not a fact that the Spanish records relating to the acts of the Director of Montes are incomplete?

A. Yes, sir.

Q. Did you make a careful search for the letter or expediente referred to in defendant's Exhibit F?

A. Yes, sir.

Q. Did you find the original of said expediente?

A. No, sir, I did not.

Q. That is simply a note and it does not indicate any document?

A. Yes, it indicates a letter.

Q. Search was made for all of those?

A. No original of which these are the briefs.

Q. You have no way of telling by whom these briefs were made?

A. I do not know at this time. I might be able to determine.

Q. Do you think you could ascertain in whose handwriting those entries were made?

A. No, I do not think I could. I suppose the man is now in Spain or was killed in the Insurrection.

Q. That is the reason I asked you?

A. I thought you referred to the authenticity. Possibly it was subscribed at the bottom and rubricated in due form by some officer. I did not examine that whole book very closely. I did not realize the necessity of it at the time, if there is necessity. I believe Mr. Bassett examined it and I believe you did also.

Q. Have you any record in your Bureau of the lands
249 within the Philippine Islands claimed to be public lands?

A. No. I have only a negative way of determining them That which is not private land is supposed to be public land.

Q. And that is the only method the Bureau now has of ascertaining whether or not any given piece of land is public land or not?

A. The only method I know of.

Q. That is true of course of Benguet Province also?

A. That is true of Benguet Province. When a man comes into the office and asks if a certain piece of land is public land, we usually tell him to go to the locality in which the land that he refers to is located and to make inquiry of the settlers and residents of that locality as to its status and then go to the capitol of the Province and consult the tax returns, and determine whether anybody is paying taxes on the tract of land, and also to consult in the capitol of the Province the Property Register, the Spanish called it "Registro de Propiedad." The Spanish Government had no surveys made of the public lands. They only surveyed such lands as they disposed of.

Q. Have you in your office expedientes from inhabitants of these islands relating to the composition of lands?

A. Yes, sir.

Q. Have you examined any of said expedientes sufficiently to testify as to what proportion, if any of said expedientes, are applications by inhabitants who claim land by inheritance from ancestors?

A. Yes, sir.

Mr. BASSETT: I object to the cross-examination of this witness on any other expedientes than those referred to in his direct examination, as being improper cross-examination,

(By Mr. HAUSSERMANN:)

Q. About what proportion, Mr. Black, of those expedientes
250 claim the land to have been inherited by the applicant from their ancestors?

A. Those I have examined, the majority appear to be of that class. There are thousands of expedientes there and I only examine a very small percentage of them.

Q. State whether or not Mr. Haussermann requested you to make certified copies of some of said expedientes?

A. Yes, sir.

Q. Are you having them made?

A. Yes, sir.

Mr. BASSETT: I object to the whole line of questioning relating to expedientes other than those referred to in the examination in chief, as being improper cross-examination.

Mr. HAUSSERMANN: The purpose of this answer is to show the form of application that the inhabitants of these Islands made for written title to their lands prior to American occupation, in view of the claim made by the Counsel for the Government at the trial that the testimony of Mateo Cariño in which he stated that he made application to the Spanish authorities at Benguet for written title during the time of Commandante Martinez was an admission that the land in question was acknowledged by said applicant to be Government land. It being contended by the applicant that he claimed to be the absulute owner of said property at the time of making such application.

Mr. BASSETT: I object to the introduction of the testimony for the purpose indicated by the attorney for the applicant, unless he shows by the witness that the applications so made were made under the provision of the Royal Order of February 13, 1894, since Mateo Cariño testified that his application was under the provisions
251 of that order.

(By Mr. HAUSSERMANN:)

Q. Will you produce said certified copies for the purpose of having the same made a part of your deposition?

A. Yes, sir.

Mr. HAUSSERMANN: I now offer in evidence the certified copies marked for identification, "Plaintiff's Exhibits, Q, R, S, T, U, V, W, X, Y, and Z."

Mr. BASSETT: The Government reserves the right to object to the introdiction of those expedientes, after an opportunity has been had to examine them on the grounds indicated above and on the grounds of incompetency.

Objection was later offered to the introduction of the exhibits on the ground of relevancy and competency.

P. S. BLACK,
Deponent.

I hereby certify that the above and foregoing is a true transcription of all the evidence given or offered by said deponent, Mr. P. S. Black, before Mr. Charles C. Cohn, Notary Public, this fourth day of June, 1904.

JAMES W. DUNCAN,
Stenographer.

252 UNITED STATES OF AMERICA,
Philippine Islands, City of Manila:

I, Charles C. Cohn, Notary Public do hereby certify that T. S. Black, was by me first sworn to testify the truth, the whole truth and nothing but the truth, and that the deposition by him subscribed as above set forth was taken in short-hand and reduced to writing by James W. Duncan, who is not interested in the suit, and was subscribed by said witness and taken at the time and place heretofore mentioned.

CHARLES C. COHN,
Notary Public.

Commission expires January 1st, 1905.

I hereby certify that on this 20th day of July, 1904, at 11.00 a. m., there has been received at this office, by mail, the foregoing document.

WM. M. BROWER,
Clerk Mountain Judicial Distric- Court.

253 DEFENDANT'S EXHIBIT O.

(Here follows map marked p. 254.)

255 During the April, 1905, Term, the Court of First Instance of the Province of Benguet entered it- opinion and judgment in said cause as follows:

UNITED STATES OF AMERICA, *Philippine Islands:*

In the Court of First Instance, Mountain Judicial District in and for the Province of Benguet.

In re Application of MATEO CARIÑO for Registration of Title to Land.

On Appeal from the Court of Land Registration.

Opinion and Judgment.

On the 22nd day of June, 1903, Mateo Cariño, a citizen of the Philippine Islands, a native and resident of the province of Benguet, and living in the jurisdiction of Baguio, in said province, presented his petition to the Court of Land Regstration, constituted under Act 496 of the U. S. Philippine Commission, praying:—that, in conformity with the law for the registration of property, certain lands of which he was the sole owner, situate in the jurisdiction of the town of Baguio, province of Benguet, might be registered under and in accordance with the provisions of said Act No. 496. The parcel or tract of land described in his said petition being described therein as follows:

"A parcel of land situate in Ipit and Lubas, of the municipal jurisdiction of Baguio, province of Benguet, Philippine Islands, the boundary lines of which are as follows: commencing at the corner of Main Street and Emerson Road, a place carefully located by means of bearings from various permanent monuments, and designated by a bar of iron five feet in length firmly planted in the earth, and marked "A" on the accompanying plat; from which point as a place of beginning run S. 30-E., 34, 646. meters; to the second mile stone by the side of the road; from thence in a direction, North, 24 deg. 50 West, 52:20 meters, to the corner marked "1"; thence in a direction North, 66 deg. 30 East, 17;00 meters; thence in a direction, North, 77 deg. 30, East, 44: meters, to a corner marked "3"; thence in a direction, N. 9 deg. 21 East, 16:80 meters, to the point marked "4;" thence in a direction, North, 42 deg. 0, East, 79:60 meters, to the point marked "5"; thence in a direction, North 78 deg. 55
East, 51:0 meters, to the point marked, "6"; thence in a
256 direction, North 64 deg. 18 East, 25:0 meters, to the point marked, "7"; thence in a direction, North, 49 deg. 13 East, 60;0 meters, to the point marked, "8"; thence in a direction, South, 54 deg. 35 East, 29:0 meters, to the point marked, "9"; thence in a direction, South 72 deg. 40 East, 190:0 meters, to the point marked, "10"; thence in a direction, South, 5 deg. 35 East, 1960: meters, to the point marked, "11"; thence in a direction, South, 25 deg. 33 East, 53:0 meters, to the point marked, "12"; thence in a

direction, North, 85 deg. 40 East, 185:0 meters to the point marked, "13"; thence in a direction, North, 30 deg. 33 East, 120.0 meters, to the point marked, "14"; thence in a direction, North, 12 Deg. 18 East, 120:0 meters, to the point marked, "15"; thence in a direction, North, 7 deg. East, 94:0 meters, to the point marked, "16" thence in a direction, South, 27 deg. 50 East, 107:10 meters, to the point marked, "17"; thence in a direction, North, 16 deg. 42 East, 100;40 meters, to the point marked, "18", thence in a direction, North, 68 deg. 35 East, 188:0 meters to the point marked, "19"; thence in a direction, South, 82 deg. 24 East, 23;50 meters, to the point marked, "20"; thence in a direction, South 54 deg. 30 East, 257:0 meters to the point marked, "21"; thence in a direction, South, 16 deg. 30 East, 76:0 meters, to the point marked, "22"; thence in a direction, South, 18 deg. 20 West, 144:40 meters, to the point marked, "23"; thence in a direction, South, 26 deg. 24 West, 5000.0 meters, to the point marked, "24"; thence in a direction, South, 43 deg. 30 West, 66:0 meters, to the point marked, "25"; thence in a direction, South, 2 deg. 5 West, 250:0 meters, to the point marked, "26"; thence in a direction, South, 36 deg. 0 west, 41:00 meters, to the point marked, "27"; thence in a direction, South 43 deg. 15 West, 296:0 meters, to the point marked, "28"; thence in a direction, South, 51 deg. 47 West, 206:0 meters to the point marked, "29"; thence in a direction, South 38 deg. 51 West, 68:0 meters, to the point marked, "30"; thence in a direction, South, 61 deg. 56 West, 253:0 meters, to the point marked, "31"; thence in a direction, North, 66 deg. 17 West, 350:0 meters, to the point marked, "32"; thence in a direction, North, 53 deg. 34 West, 175.00 meters to the point marked, "33"; thence in a direction, North, 48 deg. 27 west, 178:00 meters, to the point marked, "34"; thence in a direction, North, 44 deg. 16 West, 76:0 meters, to the point marked, "35"; thence in a direction, North, 43 deg. 0 West, 170:0 meters, to the point marked, "36"; thence in a direction, North, 49 deg. 30 East, 270:0 meters to the point marked, "37"; thence in a direction, North, 57 deg. 28 East, 200:0 meters, to the point marked, "38"; thence in a direction, North, 59 deg. 48 East, 110:0 meters to the point marked, "39"; thence in a direction, North 16 deg. 15 West, 52:60 meters, to the point marked, "40"; thence in a direction, North 4 deg. 0 East, 200.0 meters to the point of beginning, containing an area of 145 hectareas and 74/100 areas."

After due process and notice, the testimony was taken, and hearing had on said petition; and, after due consideration, a judgment was entered by said Court of Land Registration, on the 4th day of March, 1904, approving the said petition, and directing and ordering the registration of the title of the land above described, and as prayed for therein.

257 In these proceedings, the Government of the Philippine Islands, and the United States of America, by their respective representatives, appeared as adverse claimants; and opposed the registration prayed for by the said applicant, but their opposition was over-ruled and disallowed by the said Court.

On the 30th day of March 1904, the Government of the Philip-

pine Islands, and the United States of America, severally entered and perfected an appeal to this Court, from said decision; and on the 26th day of April 1904, said appeal was duly docketed in this court.

This cause came on for trial *de novo* at the Special May 1904 term of this court and was heard upon the application (as amended) and presented in the Court, below, the several answers of the Governments of the Philippine Islands and of the United States of America, and upon amendments allowed in this court to the original petition in the nature of replies to the answers allowed and filed in this court. A portion of the evidence used in the Court below was introduced upon this trial together with much new and additional evidence.

The pleadings in this court, as reformed and amended, presented, in addition to an issue presented by the general denial of the material facts required to be set forth in a petition to register the title of lands under the Land Registration Act, the following special defenses:

1st. On behalf of the Government of the Philippine Islands that, the land described in the applicant's petition and by him sought to be registered, was public land of the State, to which concession had not been granted or title of ownership thereto issued to and in favor of the applicant, or any other person; nor had possession of the applicant or any other person thereto been confirmed as against the government and,—

258 2nd. On behalf of the United States of America, that, on the 10th day of October 1903, the property described in the applicant's petition was property belonging to the public domain; and that on said 10th day of October 1903, the President of the United States did reserve for military purposes certain property situated in Baguio, Benguet, P. I., described as follows, to wit:

"Beginning at a stone monument 20 feet North of the center of the Baguio and Dagupan Wagon Road, about two miles from Baguio, where an old trail to the saw mill leave- the road; thence North 55 East, for the distance of 527 feet, to a stone monument; thence North 9 West, for the distance of 729 feet, to stone monument; thence North 71 3 East, for a distance of 2, 324: 3 feet, to stone monument; thence North 59 East, for a distance of 623: ffet to stone monument; thence South 45 53 East, for a distance of 2, 679:6 feet, to stone monument; thence North 73 53 East, for a distance of 365:6 feet; thence 4 West, for a distance of 4, 850 feet, to stone monument; thence West, 2, 305: feet, to stone monument 20 feet East of center of the Baguio and Dagupan Wagon Road; thence Northerly, following the sinuosities of the Baguio and Dagupan Wagon Road, 20 feet East of the center of the same, to a stone at point of beginning. Area 535:63 acres, more or less."

a part of which said reserve lies within the land described in the said plaintiff's petition.

Upon the trial in this Court all parties were present, and represented by counsel, and after argument had the said cause was, on the 30th day of May 1904, taken under advisement by this Court, with leave, upon agreement of all parties, to take certain other testimony by deposition; and to present briefs.

These depositions were subsequently taken and filed, in accordance with the stipulation, but by inadvertence and misunderstanding between counsel, the briefs of all the parties were not received by the trial judge until the month of October 1904. This Court acknowledges the valuable assistance of eminent counsel, interested in the same questions herein presented, and not in this cause who have, with permission of the Court, filed with the court additional briefs and authorities upon the general questions involved.

Upon the testimony presented in this court and after due
259 consideration the court makes the following:

Findings of Fact.

1st. Mateo Cariño, the applicant, is an Ygorrote, a native of the province of Benguet, P. I., about 40 to 45 years of age, and a resident of the Municipal Jurisdiction of Baguio in said province.

2nd. Mateo Cariño, the applicant, is the son, and one of several children, of Pablo Cariño, now deceased. Pablo Cariño an Ygorrote, was also a native and resident of the province of Benguet, P. I., up to the date of his death which took place on or about the year 1883. At the date of his death he was a resident of Tublay in said province.

3rd. Pablo Cariño, the father of the applicant, was a son of the Ygorrote Bangley, who was also a native and resident of the province of Benguet, P. I., up to the date of his death, which date is unknown but which certainly occurred more than forty five years ago.

4th. Bangley, the grandfather of Mateo Cariño, lived upon and occupied the land described in the applicant's petition, making it his home and residence, cultivated a small portion thereof to camotes and palay, built and occupied a house thereon, and built and caused to be built on and about said lands sundry sod and stone fences, which with natural obstructions, (and the employment of a herder, not so much to hold the cattle within the pasture as to protect the herds from theft), constituted an enclosure, wherein he pastured his cattle.

There is no evidence, that the land now described by metes and bounds in applicant's petition was, during the lifetime of Bangley, or at any other time since, completely surrounded and enclosed by *permanent* and *substantial fences,* said fences being constructed *on the exact boundary lines,* and in such a manner as to make the enclosure "cattle proof"; on the contrary it is in evidence that some
260 portions of the enclosure was renewed with brush and fallen trees after each rainy season, a necessary custom which is readily understood by those who have lived and travelled through these mountains of Benguet in the gulches of which no fence, of ordinary and usual construction, would withstand the torrents of water that pour down these gulches, which, in the dry season, appear as grassy draws, and, in the baguio seasons, are rushing mountain streams.

With these observations, the Court finds as a matter of fact that Bangley surrounded the land in question with artificial fencing,

a larger portion of such fencing being on and in the immediat vicinity of the land described in the application, which taken wit natural fencing and the fencing necessarily renewed each seaso made it a fenced pasture enclosure sufficient for the holding an pasturing of his cattle according to the customs of the country.

5th. Pablo Cariño, the father of the applicant Mateo Cariñ came into possession of said land by inheritance from Bangley, hi father, according to the Ygorrote custom, and without the inte vention of the courts, written devices or conveyances. During th lifetime of Pablo Cariño the land was similarly occupied and use either by Pablo Cariño or his representatives. Pablo Cariño himsel however, at the date of his death (about the year 1883), and for long time prior thereto, occupied and lived upon other lands i Tublay, at a considerable distance from the lands in question, an at which latter place he died. During the entire or greater portio of the life time of Pablo Cariño the land in question was use principally for pasturage although some small tracts were cultivate to camotes and palay

6th. A short time prior to the death of Pablo Cariño, he divide his personal property, and various lands situated in Tublay, L Trinidad and Baguio, in said province of Benguet, (including th lands in question) used, and occupied and claimed by him, an also in accordance with the Ygorrote custom, without the in
261 tervention of courts, written devices or written documents o conveyance of any kind, among his surviving children, i which division, the lands in question were set apart for, and th possession thereof given to his said son, the present applicant, Mate Cariño. Mateo Cariño has never occupied and lived upon said land but, up to the time of the arrival of the Americans, and until som time in the year 1903, occupied and used the said lands as pastur land, for the pasture of his cattle, horses and carabaos, constructin in addition to the fences constructed and maintained by his grand father Bangley, and his father, Pablo Cariño, other fences of wire and keeping and maintaining gates and bars on the two Ygorrot trails passing through the lands.

There is some proof that the father-in-law of Mateo Cariño live upon the land for some of the time, as the representative of Mate Cariño. There is no proof as to the time, when the land in questio ceased to be actually occupied for residence purposes by the Cariñ family, or their representatives, nor when the very small tracts withi it formerly enclosed or partly enclosed by sod fences ceased to b occupied and cultivated; but from all the evidence produced, an the examination made by the court, at the request of counsel fo all parties, and in their presence, the court finds as a fact that th actual occupation and cultivation of the very small areas and th actual residence of the Cariños, either by themselves or agents and employees, ceased many years prior to the American occupation and that, the land was at that date claimed, occupied and used by Mateo Cariño only for the pasturage of his cattle, horses and carabao. The Court further finds, that as pasture land the time during which the land in question was claimed, occupied and used by Mate

Cariño, Pablo Cariño, his father, and Bangley, his grandfather, exceeds fifty years counting back from the time of the American occupation, and the ratification of the treaty of Paris.

262 7th. Some time during the year 1900-'1 or possibly 1902, (the exact date being immaterial) the Government of the Philippine Islands, without the consent of the applicant, laid out, constructed and opened, and has ever since maintained, a public road and highway through and across the lands described in the applicant's petition. The applicant, Mateo Cariño, protested against the invasion and opening of his lands for this use and occupation to the then provincial Governor of Benguet, Hon. H. P. Whitmarsh, and a notice of his claim to the lands as its reputed owner, posted by him on said lands was torn down and destroyed by parties unknown.

8th. At or about the same time, an American, named MacDonald and another American, named Reavis, severally squatted upon portions of said lands near said public highway, but, on being informed of the claim of ownership of the applicant, both of these squatters abandoned their settlements thereon and removed from the land.

9th. The applicant, Mateo Cariño, having lost a large number of his cattle from pest, his wire fences made the object of theft, and the land in consequence of these two causes, not being longer available for pasturing his cattle, removed the remnant of his stock to other localities for pasturage. The pasturage of the land was further made impracticable and impossible by the establishment thereon of a military reservation of the United States on the 10th day of October 1903; since on or about which date, there has been kept and maintained a military post or detachment, under the command of the Commanding General of the U. S. Army in the Philippines, with orders to the Commanding officers of said post during all or a portion of this time, to keep cattle and stock from said reservation and to further protect it from trespass; and these orders have been enforced.

10th. At the date of the hearing of this case in this court and upon the date of the examination of the said lands by the

263 court, as stated in a previous paragraph, and since the establishment of the military reservation of the United States thereon in the year 1903, the lands described in the petition of the applicant have not been, nor are they now enclosed by fences, either natural, artificial or both combined, constructed, kept up and maintained *upon the exact boundary lines of said tract as described in the applicant's petition;* and the proportions of the artificial fences *upon the exact boundary line* is not more than twenty two per cent. of said boundary lines.

11th. The applicant Mateo Cariño and his father and grandfather, as stated and found in the previous paragraphs herein, have been in the quiet and undisputed possession of the land described in the applicant's petition herein, occupying and using the same, and in the manner and for the purposes as stated and found in the preceding paragraphs of this opinion, for more than fifty years prior to the date of the ratification of the Treaty of Paris. During all of that

time and up to the present date the said Cariños have claimed to be the owners of said lands, and their claim of ownership thereto *has* & respected†
been generally known and recognized ∧ *by the Ygorrotes of the neighborhood and vicinity.*

12th. The Government of the United States of America, and the Government of the Philippine Islands have never formally recognized the claim of ownership or the right of possession of the said Mateo Cariño; but on the contrary, have taken possession thereof, held and occupied the same for public and miliatry purposes, and was so holding, occupying and using the same at the time of the presentation of the applicant's petition for the registration of his title thereto.

13th. No title or document evidencing a title to said land from the Kingdom of Spain in Mateo Cariño, or in any other person, has been issued by the Crown of Spain or its officers, or by any officer of the Kingdom of Spain in these Islands.

14th. No action had ever been taken by the Crown of
264 Spain, or by any of its officers in the nature of a grant, concession, or segregation of these lands from the Royal Domain either by Judicial or administrative action prior to the transfer of sovereignty under the Treaty of Paris.

15th. On the 21st day of February 1901, the said Mateo Cariño, being at that date in the quiet and peaceable possession of the lands described in his petition herein and using the same as pasture lands, instituted a possessory information proceeding in the Court of First Instance of Union and Benguet, as provided, and the form required, under the provisions of Sect. 390 *et seq.* of the Mortgage Law of Spain, as extended to the Philippines in which proceeding he claimed to be the possessor, under the title of ownership, of a parcel of land of 152 hectares of area, and as he states in his said petition "became possessed of the title of owner by inheritance from my father," who in turn inherited it from his father, and the latter from his father." Such proceedings were had therein that on the 9th day of March 1901, the Hon. Isidro Paredes, Judge of said Court of First Instance, allowed, made and signed a decree therein in part in the words and figures following, to-wit: "In view of the articles previously referred to, and in addition thereto, Articles 392 and 393 of the aforesaid Mortgage Law, and articles 436, 438 and 440 of the Regulations for the execution of said Law, His Honor, in the presence of the Clerk of said Court, said that the . . . information submitted should be approved and is hereby approved; and directing that, in view thereof, the inscription solicited by Don Mateo Cariño of the possession of the realty aforesaid may be made a matter of record in the Registry of Property and without prejudice to a better right," and, which said decree was and is based upon the following findings, set forth in said decree, to wit:—"Whereas according to the provisions of Articles 390 of the Mortgage Law, the proprietor,

[† In pencil in copy.]

who may be lacking a written title of ownership shall be able
265 to record his right, previously proving his possession before the Judge of First Instance of the locality wherein the lands are situate: Whereas, it has been proved in this proceeding, by the written testimony taken herein by Don Mateo Cariño, that he possesses, in his own name and by title of inheritance, from time immemorial the lands hereinbefore described; and that the witnesses who have testified herein are residents and proprietors of the place wherein the estate is located their qualifications as proprietors being established by means of the certificate presented with and attached to these proceedings and therefore combine the requisites demanded in Article 901 of the aforesaid Mortgage Law." The lands described in said proceedings although vaguely described are substantially the same lands sought to be registered in this proceeding by the said Mateo Cariño. These proceedings under the Mortgage Law having been so completed and terminated were thereafter presented for record and recorded by the said Mateo Cariño in the Registry of Property for Benguet on the 11th day of March 1901 all as shown by the complete exemplification and copy of the said proceedings attached to and forming a part of the applicant's petition in this cause.

16th. During the time of the Politico-Military Comandante of Benguet, Don José Martinez, (1893-4); and again during the time of the Politico-Military Comandante, Don Antonio Bejar, (1896-7), the said Mateo Cariño made and presented to said Comandantes, respectively, and in their official capacities, an application for the title to said lands under and by virtue of the Royal Decrees of Spain then in force in these Islands, relating to the Crown or public lands, and providing for the adjustment and composition and issuance of written evidence of title by the Crown to Crown Lands that had been in the possession of citizens of these Islands, for prescribed periods of time, and under certain conditions and subject to certain procedure therein prescribed. With the first application no fees were paid; with the second application, the said Mateo Cariño
266 deposited forty pesos. These applications were presented at La Trinidad, the then capital of the province of Benguet. It is admitted, and the court finds as a fact, that no title was ever issued by the Spanish Government in these islands based upon or as a result of either or any of these applications for adjustment and composition.

17th. A search in the Bureau of Archives, and in the Archives of the Land Office, of the present Government at Manila was made in the month of May, 1904, and the testimony of the Chief and Acting Chief of said Bureaus, respectively, was taken, and appears in the record in this cause. This search shows the following results and establish these facts:—neither of the petitions, named and described in the preceding paragraph, were found, nor any other document or papers relating to the lands in question, and no reference to any such application, applications petitions or other documents, *save only* the following abstract from Letter Books of the Archives

of the Land Office, (late Forestry Bureau of the Spanish Government), which may or may not refer to the lands in question.

The first two and the earliest are of equal date, the first abstract reads:—"5842, Received in the Forestry Bureau, July 13th, 1895, through the Dirección Civil, date of instrument July 5th, 1895, No. 267 of the P. M. Comandancia of Benguet," and further abstracted as follows: to wit: "Official letter from the Comandancia of Benguet remitting petition for the denouncement of lands of the Ygorrote Mateo Cariño," and,

The second, exactly the same as the one just described, save the Forestry Bureau number is 5843 and the Comandancia number is 268.

The third and last is also from the Forestry Bureau Archive- and reads as follows:—

"No. 6617, Received in the Forestry Bureau September 18, 1897, dated September 16, 1897, through the Dirección Civil,
267 subject lands, Transmitting official communication from the office of the Secretary of the Governor General and informing (all concerned) *that under no consideration can lands in Benguet be conceded until such time as those lands are designated in a definite manner that the Sanitarium and the other dependencias of the same ought to occupy.*"

18th. On October 3rd 1901, an option contract of purchase and sale of the lands described in applicant's petition, when title thereto should be obtained by the said Mateo Cariño, was made, executed and delivered by said Mateo Cariño to Mr. M. A. Clarke of Manila, covering the lands in question; and the same was thereafter registered and recorded in the Registry of Property of Benguet. This contract of purchase and sale remains in full force and effect.

19th. On the 23rd day of May 1903, the said Mateo Cariño caused the land described in his petition to be surveyed and platted by a competent engineer and surveyor, B. Picton Davis, the plat being attached to applicant's petition, and appearing in the evidence on the trial in this court as Applicant's (plaintiff's) Exhibit "A." By this survey the area is given as 146.7425 hectareas (a slight but not very material difference from that described in the possessory information proceedings, the area of the latter being found as 152 hectareas). The lands shown on this plat correspond to the metes and bounds as set forth in applicant's petition.

Opinion of the Court and Decision.

Before entering upon the consideration of the questions at issue herein, and that require the decision of this court, the Court believes that it should refer to certain matters contained in the proofs presented in this cause that might have a tendency to obscure the facts as found by this Court, and the basis upon which the opinion and decision of this Court rests.

1st. An attempt was made by the contestants to establish the fact that Mateo Cariño inherited these lands from his father-in-
268 law, who it is admitted lived upon the land a portion of the time it was occupied and claimed by Mateo Cariño.

In what capacity he lived there is not shown:—whether he cultivated the small portions indicated to camotes and palay,—very small portions comparatively,—or whether he occupied a hut and looked after Mateo Cariño- stock, in the capacity of a herder, according to the Ygorrote custom, even when the cattle are in so called pastures, it does not anywhere appear in the testimony and the court has made no findings specific in their nature as to the character of this occupation.

To sustain this contention, the contestants produced an Ygorrote witness, named Bayeng, who was sworn and examined. In addition to the fact that this witness swore and testified positively, that Mateo Cariño inherited the land from his father, and, again, that Mateo Cariño inherited the land from his father-in-law; in themselves flat contradictions, the low order of intelligence and unfavorable appearance and manner of this witness while testifying leads the court to the inevitable conclusion that his entire testimony is unworthy of credit and it has been entirely disregarded by this court. The contention that Mateo Cariño inherited the land from his father-in-law, instead of his father, wholly fails in the proof and was abandoned by counsel in their argument.

2nd. In various portions of the record, and especially in a letter written by Hon. Wm. F. Pack, Provincial Governor of Benguet, dated September 11, 1903, and directed to the Clerk of the Court of Land Registration, and which letter appears in the record as Defendant's Exhibit "D," there is much reference made as to the position and character of Mateo Cariño as a "Bucknon," as known and recognized among his own people. This Court considers the entire argument based upon this contention so immaterial and irrelevant that it has not thought it worth while to make any findings of fact upon the proofs offered thereon, and were a new trial to be granted in this case, the court would exclude all evidence whatever
269 relating thereto.

Let it be admitted as a fact then, that Mateo Cariño is *a* called and recognized among his own people as a "bucknon." This has been urged by the defendants, as a confirmation of the statement of Governor Pack that it is a fact that there existed among the Ygorrotes a *"native custom, allotting lands to different chiefs,"* and upon which the contestants' counsel have urged with commendable zeal, that Mateo Cariño should not be allowed to register a title to this land since he acquired and holds them, as a "bucknon" or chief among the Ygorrotes.

Aside from the consideration appearing in Governor Pack's letter itself that he was not stating facts known to him but only traditions and hearsay, there is this consideration of the force and effect of such statements. A statement of Gov. Pack added as a volunteer statement, to a letter or certificate addressed to the Clerk of the Court of Land Registration and stating a tradition that there existed among the Ygorrotes a *"native custom allotting lands to different chiefs,"* does not establish before this court the existence of any such custom, under the rules of evidence, and so far as this case is concerned the existence of any such custom is not proved. But there is also some oral testimony upon the same subject, which proves, if it proves

anything material to the issues in this case, that Mateo Cariño is known among his own race as a "bucknon"; taking the testimony upon this point, and considering it all together, giving to the conclusions and beliefs of the excellent Governor all the weight, to which as a matter of law they are entitled, this court believes from all the evidence, and the court's belief is confirmed by his own observations and experience among the Ygorrotes, that Mateo Cariño, himself an Ygorrote and a man of more than the average intelligence, has given the correct definition and interpretation of the title "bucknon," as applied and understood among the Ygorrotes; viz: "A man
that lives Comfortably."
270 In short it designates a man whose industry, thrift and superior intelligence has enabled him to raise himself above his fellows, to accumulate wealth, and to improve upon the manners and customs of living of his race; it is a process of evolution and is not the resultant of one man's life, but of a growth extending through generations. It differs materially from the prowess in battle, the slaughter of tribal enemies, and the warlike spirit of savagery that raises the warrior of the American Indian tribes to the position of a chief. This title "bucknon" is in no sense the holding of an office of chiefta-nship, save only as the man whose industry, thrift and superior intelligence accompanied by honesty and integrity, and resulting in the accumulation of wealth, the improvement of manners and customs of living, is invariably looked up to among all people, whether christian or non-christian, and in every grade of civilization, above pure barbarism, as a leader among his fellows and an example for emulation.

It would seem, from the evidence, that this manifests itself among
house†
the Ygorrotes in a better [home]* and a fixed and permanent residence, the construction of fences and permanent improvements upon lands, and, as civilization advances amongst them, as it is now advancing with great rapidity under the wise and generous laws provided by the Commission for the Government of Benguet province, laws interpreted and enforced both in the letter and spirit by Hon. Wm. F. Pack, the present provincial Governor, it now further manifests itself in a desire for the education of their children, that they may be better fitted for an improved social and political status; and for participation in the affairs of their own government under existing laws. In the view of this court the evidence shows that this is the character and status of the "bucknon" Mateo Cariño.

But whatever may be the correct definition and interpretation of the term "bucknon," as used and understood among the Ygorrotes,
either of the present day, or in past generations, it is clear
271 to the court that it can not and does not enter into the questions at issue in this case.

Mateo Cariño seeks to register, under the so called Land Registration Act, the title to a tract of land, to which land he claims owner-

[*Word enclosed in brackets erased in copy.]
[†In pencil in copy.]

ship." If it is a fact that he is the present owner of the land and that he has a legal and valid title thereto, then he is entitled to have it registered whether he is himself a "bucknon," hereditary chiefta-n, or a common laborer; and without reference to whether or not, in some remote period, the ancestors of Mateo Cariño, in their capacity as "bucknons," and when a different definition and understanding of the title "Bucknon" may have existed may have come into possession of these lands by an allotment of the Ygorrotes of that day; all of which suppositions are not proved in this case; are, apparently, incapable of proof in law, and are, at the best, speculative theories, or, as the able Provincial Governor terms them, "Traditionary but authentic."

3rd. In order to clear the record of another matter, so far as it affects the issues in this case, and that there may be no question as to the basis upon which the opinion and decision of this court rests, the court finds it desirable to refer to another matter, appearing in the evidence, and upon which much stress has been laid in the presentation and argument of this case.

It relates to the option contract of purchase and sale executed between one M. A. Clarke, an American resident and business man of Manila and the applicant Mateo Cariño, dated October 3rd, 1901, by the terms of which, under certain conditions therein named, including the obtaining of perfected title in Mateo Cariño, and the payment of certain moneys, etc., the said M. A. Clarke should become the owner of the lands described in applicant's petition. This contract in its entirety will be found in the record, and from the importance that seemed to be placed thereon by the defend-
272 ants it has been made the basis for the finding of facts certain in this opinion. But the view entertained by this Court, as to the effects of this contract upon the issues presented, renders it unnecessary to refer hereto in its conditions in further or greater detail.

This Court cannot see any relevancy of this contract, nor of the examination and cross-examination of the parties in reference thereto, unless it be to substantiate and establish as facts the voluntary conclusions and statements (not evidence nor proof in this case nor so understood by the writer of the letter himself), in the letter of Governor Pack of September 11, 1903, to the Clerk of the Court of Land Registration and hereinbefore referred to. These statements are to the effect, (the essential portions being exactly quoted), that when the American General Bell, during the insurrection "became convinced from his personal observations in other parts of the world, and his experience in the tropics, that in the future it will be inevitable that a great army post for health and recuperation would be established in this mountain province" and, "so thoroughly was he possessed of this idea that he himself selected the land on which the post should hereafter be established," and, "reported these facts to his superior"—that then and thereupon "comes a certain Mr. Clarke, who, taking advantage of the native custom, allotting lands to different chiefs, has this Ygorrote make

a claim of possession of this particular tract of land, which because the military desired it, has become suddenly in his mind valuable."

The learned counsel who argued this case before this court seems to see in this contract and the evidence in reference to the same, in connection with the statements in the Governor Pack letter, some mysterious and fraudulent imposition upon the Ygorrotes in general, and Mateo Cariño in particular, that should be considered by this court in the determination of the issues presented in this case for its decision. The court does not share in the anxiety of the counsel as to the necessity for the protection of the Ygorrote,
273 Mateo Cariño, from "speculators" nor does the court see any thing fraudulent or inequitable in this contract, nor in the negotiation of the same by Mr. Clarke. It seems to be a speculation on the part of Mr. Clarke in all respects legitimate and honorable. So far as this case is concerned neither the option contract, nor the voluntary conclusions and statements quoted from the Governor Pack letter, as to the motives that actuated Mr. Clarke in negotiating this contract serve to influence this Court in any degree in its opinions and conclusions.

The Court sees but two questions, so far as this case is concerned, presented for its decision, aside from that of the jurisdiction of this court, which has been questioned, namely; *Is Mateo Cariño the owner of this land? and; if so, has he a legal and valid title thereto?* If both these questions are answered in the affirmative then Mateo Cariño may at any time grant bargain, sell, convey, encumber or dispose of his ownership and title as he chooses. On the other hand if the United States is the owner of the land and the title thereto is vested in the United States, of the Government of the Philippine Islands, then the option contract is a nullity and Mr. Clarke has not gained, nor has Mateo Cariño lost anything thereunder.

There does not seem to have been a very close distinction drawn in this case, between evidence affecting the issues that courts alone may consider and decide and the evidence, opinions and conclusions, that may be properly directed to a legislative assembly as a basis upon which to ask for remedial legislation authorizing the granting of titles, for instance, to parties having claims only equitable in their nature and arising under treaties of peace and the transfer of sovereignty: and to entertain which, as will be hereafter shown, courts must be specifically granted jurisdiction by the Sovereign power.

Title by Prescription.

The decision of this case in the Court of Land Registration which was favorable to the applicant, was based solely and
274 entirely upon a title by prescription—prescription as against the State (Spain)—Mateo Cariño himself and ancestors having quietly and peaceably occupied and claimed the lands in question under claim of ownership and adversely to all the world for a period of more than forty years during the sovereignty of Spain.

This claim of title has been urged here by the applicant and with great force. It is claimed, that by "decree", decision and code provision, the Government of Spain has recognized title by prescription as against the state" and that this claimant is entitled to have his prescriptive title to the lands in question recognized and confirmed in this action.

Starting upon the theory that title to *State lands in Spain* could be gained by prescription *under the Partidas* (Partida Title 29 Law 7), *and under the Code*, (Civil Code. Articles 1936 and 1932 and 1959); and, that these laws *were also applicable to the lands of the crown in the Philippine Islands* (which includes the lands in question) the applicant claims an absolute title to these lands, as against the United States of America and the Government of the Philippine Islands.

He cites the case of Francisco Aragon Gonzales, decided by the Supreme Court of Spain, April 16, 1881, in which, in answer to the contention of the Ministerial Fiscal, that lands belonging to the State were imperscriptable, the Court says:

"Law 7, Title 29, Par. 3, erroneously cited in the sixth ground of the appeal is not applicable, nor could it have been infringed by the decision, because among other things declared by said law *as not subject* to prescription there is no exemption of real property belonging to the State, which as a *legal personality*, is subject to the prescription of the *common law;* and no exceptions or privileges can be accorded *which the law does not concede.*"

Citing also:

Sanchez Roman Vol. 3 p 277 *et seq.*

The sections of the Civil Code cited, and which Code is now in force in these Islands, except in so far as it may have been replaced or modified by laws passed since the assumption of American sovereignty in these Islands, are as follows:

275 "Art. 1936. "All things which are the object of commerce are capable of prescription."

Art. 1932. "Rights and actions shall extinguish by prescription to the prejudice of all kinds of persons, including judicial persons, in the terms prescribed by law."

Art. 1959. "Ownership and other property rights in real property shall also prescribe by uninterrupted possession of the same for thirty years without the necessity of title nor good faith and without distinction between present and absent persons."

Sections 1932 and 1959, above quoted, are now repealed by American legislation and are not in force. This however does not affect their validity as presented to this Court by applicant's counsel in support of their argument for title by prescription.

Conceding that prescription, as against the State, *was the law within the Kingdom of Spain*, and under such law a title could be sustained to lands of the State within the Kingdom, *it does not follow that such was the law as applied to the lands of the Crown of Spain in the colonies, including the Philippine Islands.*

The policy of Spain, it is true, was to deal liberally with the inhabitants of the Colonies in the matter of Crown lands.

From time to time she passed laws and issued Royal decrees, urging the natives and inhabitants of the Philippine colony to identify themselves with the development of the country and its permanent prosperity, by settling upon and cultivating the public lands and receiving fixed and royal titles of ownership thereto. To that end provisions were made that the occupants and cultivators of the Crown lands in the Philippines must present their proof of occupation and cultivation of Crown lands to the designated officers of the Crown in these Islands and in return they should receive a written evidence of title from the Crown; and threatening to dispossess those occupants and cultivators if they did not comply with these offers of adjustment and composition tendered them as a gift from the sovereign and that their holdings would be sold to others. In these Islands many such royal decrees were from time to time promulgated.

In none of these decrees, applicable to the Philippine Islands,
276 does this court find anything that can be construed as a recognition by Spain in her colonies as a prescriptive title to Crown lands in these Islands; her laws touching lands and record of title in the colonies must be construed together in order to discover her system and policy; and, when so considered to inject into these colonial land laws a doctrine of prescription as against the State for Crown lands seems to be to defeat the clearly expressed object and purpose of her system and policy for the disposal of lands in the Philippines; and which is thus stated by the Colonial Minister, under date of May 22, 1893, in the introduction to the amended Mortgage law, in these words:—"Our mortgage law, which already had a large number of precedents in the Archipelago, can be reformed by slight amendments, which, together with the reform of the provisions regarding the adjustment of royal patrimonies, *will pave the way for the advent of the institutions of credit for lands, which is based on a sound mortgage law, and legally recorded deeds, which define and secure all interests in the land.*"

Had it been the intention of the Ministry to extend to the Philippines the doctrine of prescription as held by the Supreme Court of Spain in the Gonzales Case, it would seem to this Court that the Ministry would have clearly and unequivocally expressed this doctrine, not leaving it in a position of doubt. It is not so clearly expressed in any of the many land laws and Royal decrees defining a colonial land law for the Philippines. On the contrary specific provisions were clearly made in these Islands by which the Crown could be divested of its ownership and the paramount title; and by which such ownership and title should become vested in the subject. These decrees and provisions were far more clear and specific than the loose methods in vogue in the Spanish territories of Louisiana and Florida, acquired by the United States from France and Spain respectively, and which laws and treaties, together with the Acts of

Congress formed the basis of the decisions in the Supreme
277 Court of the United States which decisions and the rules and principles upon which they rest will hereafter be referred to and quoted in this decision. The prescription as against the State

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so far as we can discover was never decided by the Supreme Court of the United States; and, according to our understanding and interpretation of those old laws and treaties, including the United States laws supplemental to the Spanish land laws of these two colonies as enacted by Congress from time to time, we do not see how this question could have been raised; and the objections thereto appear even more clear and specific under the laws in relation to Crown lands that were in force in the Philippine Islands and rights of property protected under the Treaty of Paris.

However this Court must be guided in its opinions upon this question of prescription by the decision of the Supreme Court of the Philippine Islands in the case of *Valentin et al. vs. Murciano* No. 1413, (Official Gazette, No. 22, June 1, 1904). The understanding of this Court is that the Supreme Court of the Philippine Islands has decided adversely to the contention of the applicant on the question of prescription, as urged by him, and this Court follows the evident tenor and conclusions of the Supreme Court in that case.

Justice Willard, in delivering the opinion of the Court, in the case just cited says:—

"Whether in the absence of any special legislation on the subject a general statute of limitations in which the State was not expressly excepted would run against the State as to its public lands we do not find it necessary to decide. Reasons based upon public policy could be adduced why it should not, at least as to such public lands as are involved in this case. (See Act 926, Sect. 67.) We are, however, of the opinion that the case at bar must be decided, not by the general statute of limitation contained in the Partidas, but by those *special laws which from the earliest times have regulated the disposition of public lands in the colonies.*" "Did these special laws recognize any right of prescription against the state as to these lands, and if so to what extent was it recognized?"

And in the comments of the learned Justice in quoting various of these special laws this question is further and directly answered in the following manner:

278 "*But it was necessary*, however, *that action should in all cases be taken by public officials before any interest was acquired by the subject.*"

And, again,

"While the State has always recognized the right of the occupant to a deed if he proves a possession for a sufficient length of time, yet it has always insisted that he *must make that proof before the proper administrative officers, and obtain from them his deed, and until he did that the State remains the absolute owner.*

Also,

"It is apparent that it was not the intention of the law that *mere possessions for a length of time should* make the possessors the owners of the lands possessed by them *without any action on the part of the authorities.* It is plain that they were required to present their claims to the authorities and *obtain a confirmation thereof.*"

In applying the language of the Supreme Court of the Philippine Islands, and as above quoted, to the established facts in the case at

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bar we find: that, on the 11th day of April 1899 when, under the treaty of Paris, the holdings and property interests of the Crown and Kingdom of Spain in the Philippine Islands, passed to the United States of America, the Crown of Spain was *the absolute owner of* the lands in question: that Mateo Carino's sole claim or interest therein, if any, was that based only upon the possession and use of the lands as pasture lands for more than thirty years, and, although he had presented his claims to the authorities of Spain in these Islands ha had not *obtained a confirmation thereof.* As will be seen later in this opinion there is evidence which tends to prove that the authorities had *refused to confirm his application for title thereto* and to all intents and purposes *had denied the same.*

The conclusions of the Supreme Court of the Philippine Islands as announced in the opinion of Justice Willard in the case of Valentin *et al. vs.* Murciano above quoted, is in harmony with the principles laid down by the Supreme Court of the United States in cases decided by the latter court and arising under the Louisiana and Florida treaties. At the risk of becoming unnecessarily prolix, and even tedious, this court has of its own motion decided to incorporate in this decision the result of its own examination
279 of these Federal cases upon the subject of lands and titles in conquered and ceded territory.

In this abstract that follows, based upon our examination of the authorities, and with long years of experience and residence in the section of the United States included in the Louisiana purchase, we have endeavored to treat fairly all the interests of the natives of a conquered and ceded territory. To this end we have incorporated the extracts that most strongly favor *the rights of the inhabitants of the* ceded territory. Our Supreme Court of the United States set a high standard in this and the rules and principles laid down therein have furnished a safe guide to our Government ever since, and not only for the judicial branch of the government but also for the administrative and legislative branches. The legislation of the Congress of the United States and of the Philippine Commissions, which laws are presently to be considered, are all based upon these rules and principles—the most liberal and generous that have ever been conceded to any country acquired by virtue of conquest and cession.

Our enquiry is directed and divided into an examination first of the fundamental principles governing a conquered and ceded territory, then the laws in force, the rights of property and the rules for determining the validity of grants and concessions.

Fundamental Principles.

Chief Justice Marshall, in 1823, in the case of Johnston and Graham, lessees, *vs.* McIntosh, 8 Wheaton, 589, laid down this fundamental principle, upon which, as a basis, the subsequent decisions of the Supreme Court of the United States were constructed, extended and elaborated. The language of the eminent jurist is as follows:

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2. The title by conquest is acquired and maintained by force. The conqueror prescribes its limits. Humanity, however, acting on public opinion, has established, as a general rule, that the conquered shall not be wantonly oppressed, and that their condition shall remain as eligible as is compatible with the objects of the
280 conquest. Most usually they are incorporated with the victorious nation and become subjects or citizens of the government with which they are connected. The new and old members of the society mingle with each other; the distinction between them is gradually lost, and they make one people. Where this incorporation is practicable humanity demands, and a wise policy requires, that the rights of the conquered to property should remain unimpaired; that the new subjects should be governed as equitably as the old, and that confidence in their security should gradually banish the painful sense of being separated from their ancient connections and united by force to strangers.

When the conquest is complete, and the conquered inhabitants can be blended with the conquerors, or safely governed as a distinct people, public opinion, which not even the conquerors can disregard, imposes these restraints upon him; and he cannot neglect them without injury to his fame, and hazard to his power."

Laws in Force.

"This government puts itself in place of the foreign sovereigns and became vested with all their rights, subject to their concomitant obligations to the inhabitants; both were regulated by the law of nations according to which the rights of property are protected, even inviolable† in case of a conquered country, and held sacred and [invinciable]* if it is ceded by treaty with or without any treaty to such effect. *And the laws whether in writing or evidenced by the usage and custom of the conquered or ceded country continue in force until altered by the new sovereign.*"

Strother *vs.* Lucas (1838), 12 Peters, 436.

Citing:

Johnson *et al.* Lessee-, *vs.* McIntosh, 8 Wheaton, 589.
Harcourt *et al. vs.* Gaillard *et al.* 12 Wheaton 528.
Henderson *vs.* Poindester's Lessee 12 Wheaton, 535.
United States *vs.* Percheman 7 Peters 86-87.
United States *vs.* Clarke 8 Peters 444.
United States *vs.* Clarke 8 Peters 465.
Delassus *vs.* United States 9 Peters 133.
Mitchell *et al. vs.* United States 9 Peters 734, 747, 748 and 749.
United States *vs.* Fernandez *et al.* 10 Peters 305.
Smith *vs.* United States 10 Peters 330.
Mayor &c New Orleans *vs.* U. S. 10 Peters, 721-2 &-

[*Word enclosed in brackets erased in copy.]
[†In pencil in copy.]

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Rights of Property.

(Under Treaty.)

"That when a territory is acquired by treaty, cession or even conquest, the rights of the inhabitants to property are respected and sacred"

State of R. I. *vs.* State of Mass. (1838), 12 Peters 749.

Citing:

Johnson *et al.*, Lessee- *vs.* McIntosh, 8 Wheaton 589.
Henerson *vs.* Poindexter's Lesse-, 12 Wheaton 535.
United States *vs.* Aredodndo *et al.* 6 Peters 712.
United States *vs.* Percheman 7 Peters 86-7.
United States ve. Clarke (1834) 8 Peters 445.
Delassus *vs.* United States 9 Peters 133.
Smith *vs.* United States 10 Peters 330.
Mayor &c New Orleans *vs.* U. S. 10 Peters 718.

(Under Louisiana Treaty.)

281 "The right of property, then, is protected and secured by the treaty; and no principle is better settled in this country, that that an inc*oh*ate title to lands is property. *Independent of treaty stipulations, this right would be held sacred.* The sovereign who acquires an inhabit*a*ted territory, acquires full dominion over it; but this dominion is never supposed to divest the vested rights of individuals to property."

Delassus *vs.* United States, (1835) 9 Peters 133.

(Under Louisiana Treaty.)

"It was never doubted by this court that property of every description in Louisiana was protected by the law of nations, the terms of the treaty and the Acts of Congress; nor that in the term "property" was comprehended every species of title, inc*oh*ate or perfect, embracing those rights which lie in contracts; those which are executory, as well as those which are executed. In this respect the relation of the inhabitants to their government is not changed. The new government takes the place of that which has passed away."

Smith *vs.* United States (1836) 10 Peters 330.

Affirming:

Smith *vs.* United States (1830) 4 Peters 512.

"Inc*oh*ate claims were not changed in their character by the treaty by which Louisiana was acquired. The treaty imposed on the government only a practical obligation to perfect them, *and they cannot be enforced by any action of the Judicial Tribunal.*

Choteau *vs.* Echart 2 How. 344.

The Act of Congress, above referred to, is the Act of the 26th (25th) of May 1824, which, * * * "gives the District Court (Of Missouri) authority to hear and determine all questions arising from any cause brought before it by the petition of any person claiming lands within the State of Missouri * * * by virtue of any French or Spanish grant, concession, warrant or order of survey legally made, granted or issued before the 10th day of March, 1804, by the proper authorities, to any person or persons resident in the province of Louisiana, at the date thereof, or on or before the 10th day of March 1804, and which was protected or secured by the treaty between the United States of America and the French Republic, of the 30th of April 1803 and which might have been perfected into a complete title, under, and in conformity to the laws, usages and customs of the government under which the same originated, had not the sovereignty of the country been transferred to the United States"

9 Peters 132 * * *.

The subject of the waiver of legal rights and the admission of equitable rights and their determination, under Act of Congress, will be noted hereafter in this decision in connection with the Acts of Congress applicable to lands in the Philippines and the jurisdiction of Courts to hear, try and determine such equitable rights to lands, etc.

Rules for Determining Validity of "Grants" and "Concessions."

282 (Under Louisiana Treaty.)

"The language of the treaty ceding Louisiana excluded every idea of interfering with private property; or transfer-ing lands *which had been severed from the Royal domain.* Their right to property remains unaffected by this change."

Delassus *vs.* United States (1835) 9 Peters 135.

"A title" is thus defined in its three essentials:
(1.) The concession is unconditional.
(2.) The land was regularly surveyed, and,
(3.) The party put into possession."

Delassus *vs.* United States, *Supra.*

"We have as uniformly held that in ascertaining what titles would have been perfected if no cession had been made to the United States, we must refer to the general course of the *law of Spain to local usage and custom; and not to what might have been, or, would have been done by the special favor or arbitrary power of the King or his officers.*"

Smith *vs.* United States (1836) 10 Peters 331.

(Under Florida Treaty.)

"It has been distinctly decided, in the Florida cases, that the land claimed *must have been severed from the general domain of the King by some grant which gives it locality by its term-, by a preference to some description, or by* a vague general grant, with an authority to locate afterwards by a *survey making it definite:* which grant or authority to locate must have been made before the 24th of January 1818" and "That where the grant is descriptive a survey in any other place is unauthorized; and that where a survey was made of part of a descriptive grant *before that time,* an order or permission to survey the residue elsewhere, *made afterwards,* is void, in controvention of the terms of the treaty, and the Act of Congress; it *being in effect and substance a new grant, made after the power of the Governor to make grants had ceased.*"

Smith *vs.* United States 91836) 10 Peters 331.

(Under Louisiana Treaty.)

"Until a location was made, it was a mere authority to locate, which he might have exercised at his pleasure, both as to time and place, *by the agency of a public surveyor, authorized to separate lands from the Royal Domain by a survey pursuant to a grant, or order of survey.*

At the time of the cession nothing had been so severed either by a public or private surveyor, or any act done — which the King could be in any way considered as a Trustee for St. Vrain for any portion of the ten thousand arpents * * * *an indispensable pre-requisite to such right* was some act by which his grant would acquire such locality as to attach to some spot; until this was done, the grant could by no possibility have been perfected into a complete title."

Smith *vs.* United States (1836) 10 Peters 333.

"This court has defined property to be a right, legal or equitable, inceptive, incohate or perfect, *which before the treaty with France in 1803 or with Spain in 1819 had so attached to any piece or tract of land, great or small, as to affect the conscience of the former sovereign 'with a trust' and make him a trustee for an in-*
283 *dividual, according to the law of nations, of the sovereign himself, the local usage or custom of the colony or district, according to the principles of justice and rules of equity.*"

Strother *vs.* Lucas (1838) 12 Peters 436.

Citing:—

United States *vs.* Clarke (1834) 8 Peters 450.
United States *vs.* Aredondo *et al.* (1832) 6 Peters 712.
Delassus *vs.* United States (1835) 9 Peters 144.
Choteau's Heirs *vs.* United States (1835) 9 Peters 144.
Mitchell *vs.* United States (1835) 9 Peters 737.
Soulard Heirs *vs.* United States (1836) 10 Peters 105.
Smith *vs.* United States (1836) 10 Peters, 331, 335, 336.

On it appearing that, "No survey was made before the cession of Louisiana to the United States" the grant was denied in

Wherry *et al. vs.* United States (1836) 10 Peters 338.

Affirming,

Smith *vs.* United States (1836) 10 Peters 331 &c. (Florida Treaty).

Particular attention is invited to the following statement:—

"Under the treaty it is true, that grants of land made before the 24th of January 1818, by His Catholic Majesty, or by his lawful authorities, stand ratified and confirmed to the same extent that the same grants would be valid if Florida had remained under the dominion of Spain; and the owners of conditional grants who have been prevented by the circumstances of the Spanish nation, from fulfilling all the conditions of their grants, have time by the treaty extended to them to complete such conditions. That time * * * began to run in regard to individual rights from the ratification of the treaty; and the treaty declares if the conditions are not complied with within the terms limited in the grants, that the grants shall be null and void."

Kingley *vs.* United States (1838), 12 Peters 484.

The quotations from our Supreme Court in the United States need not be further extended, but it should not be overlooked that they must be read in connection with the language of the treaty provisions therein referred to. It is not deemed necessary to repeat them here.

Reverting to the case at bar this court has, upon the evidence, found as a fact, that,

"No action had ever been taken by the Crown of Spain, or by any of its officers, in the nature of a grant, concession or segregation of these lands from the Royal Domain, either by judicial or administrative action, prior to the transfer of sovereignty under the treaty of Paris."

Some such action was an "*indispensable pre-requisite*" in order to divest the Crown of Spain of its title and until such action was taken the State remains "the absolute owner."

This Court cannot escape from the conclusions and accord-
284 ingly holds, that the lands in question were lands belonging to the Royal Domain, and as such, became and were vested under the treaty of Paris in the Congress of the United States and they could not thereafter be disposed of except in such manner and subject to such conditions as the American Congress should provide.

In this view of the case it becomes necessary to see what Congress has provided in reference to the disposition of public lands.

Acts of Congress.

The very first action of Congress was an assertion of this exclusive ownership and right of Congress to provide for the disposition of the

public lands in the Philippines and operated as a bar to any action either judicial or administrative, for the disposal of said lands, of the issuance of any evidence of title thereto by any authority or tribunal in these islands. It is found in the Act of March 2, 1901, in which it was provided *"that no sale or lease or other disposition of the public lands or the timber thereon or the mining rights thereon shall be made.*

Clearly this suspended the operation of all laws affecting the disposition of Crown Lands and public lands in the Philippines until such time as the American Congress should provide therefor. Property rights in land, of whatsoever nature, under the treaty of Paris for which no written evidence of Spanish title existed thereafter depended for their recognition and establishment upon such rules and proceedure as Congress should establish and provide.

The next action of Congress as to the public lands in the Philippines is found in the Act of July 1st 1902 known as "The Philippines Bill."

There is no mistaking the provisions and intent of this Act of Congress, as applied to the public lands of the Philippines. Sections 12, 13, 14, 15 and 16 are as follows:—

285 SEC. 12. That all the property and rights which may have been acquired in the Philippine Islands by the United States under the Treaty with Spain signed December tenth, eighteen hundred and ninety eight, except such land or other property as shall be designated by the President of the United States for Military and other reservations of the Government of the United States, are hereby placed under the control of the Government of said Islands, to be administered for the benefit of the inhabitants thereof except as provided in this act.

SEC. 13. That the Government of the Philippine Islands, subject to the provisions of this act and except as herein provided, shall classify according to its agricultural character and productiveness, and shall immediately make rules and regulations for the lease, sale, or other disposition of the public lands other than timber or mineral lands, but such rules and regulations shall not go into effect or have force of law until they have received the approval of the president, and when approved by the President they shall be submitted by him to Congress at the beginning of the next ensueing session thereof and unless disapproved or amended by Congress at said session they shall at the close of such period have the force and effect of law in the Philippine Islands: Provided, that a single homestead entry shall not exceed sixteen hectareas in extent."

SEC. 14. That the Government of the Philippine Islands is hereby authorized and empowered to enact rules and regulations and to prescribe terms and conditions to enable persons to perfect their titles to public lands in said Islands, who, prior to the transfer of sovereignty from Spain to the United States, had fulfilled all or some of the conditions required by the Spanish laws and royal decrees of the Kingdom of Spain for the acquisition of legal title thereto, yet failed to secure conveyance of title; and the Philippine

Commission is authorized to issue patent without compensation, to any native of said Islands, conveying title to any tract of land not more than sixteen hectareas in extent, which were public lands and had been actually occupied by such native or his ancestors prior to and on the thirteenth of August, eighteen hundred and ninety eight.

SEC. 15. That the Government of the Philippine Islands is hereby authorized and empowered, on such terms as it may prescribe, by general legislation, to provide for the granting or sale and conveyance to actual occupants and settlers and other citizens of said Islands such parts and portions of the public domain, other than timber and mineral lands, of the United States in said Islands as it may deem wise, not exceeding sixteen hectares to any one person and for the sale and conveyance of not more then one thousand and twenty four hectares to any corporation or association of persons; Provided, that the grant or sale of such lands whether the purchase price be paid at once or in partial payments, shall be conditioned upon actual and continued occupancy, improvement, and cultivation of the premises sold for a period of not less than five years, during which time the purchaser or grantee can not alienate or encumber said land or the title thereto; but such restriction shall not apply to transfers of rights and title of inheritance under the laws for the distribution of the estates of decedents."

SEC. 16th. That in granting or selling any part of the public domain under the provisions of the last preceding section,
286 preference in all cases shall be given to actual occupants and settlers; and such public lands of the United States in the actual possession or occupancy of any native of the Philippine Islands shall not be sold by said Government to any person without the consent thereto of said prior occupant or settler first had and obtained: Provided, that the prior right hereby secured to an occupant of land who can show no other proof of title than possession, shall not apply to more than sixteen hectares in any one tract."

Under the provisions of this Act of Congress, it will be noted. that in Section 12" all the property and rights which may have been acquired in the Philippine Islands by the United States under the treaty of Paris," "*except such land or other property as shall be designated by the President of the United States for military and other reservations of the Government of the United States,*" are placed *under the control of the Government of the Philippine Islands,* subject to no limitations whatever save such as are provided in the Act of Congress known as "The Philippines Bill" and the objects and purposes are clearly stated in said trust, viz: "*to be administered for the benefit of the inhabitants hereof.*" (Sec. 12.)

The exceptions and limitations provided in the said Act are substantially these:—

1st. The Government of the Philippine Islands shall classify the public lands according to their agricultural character and productiveness.

2nd. They shall immediately make rules and regulations for the lease, sale, or other disposition of the public lands.

3rd. Before these rules and regulations shall become operative and have the effect of law they shall be (*a*) approved by the President of the United States; (*b*) be submitted by the President, with his approval, to the Congress of the United States at the beginning of the next session for consideration of Congress.

4th. A homestead shall not exceed sixteen hectares.

5th. And should Congress fail to amend such rules and regulations as should be adopted etc., by the Commission, and during the session of Congress at which they were submitted, then and in that case, these rules and regulations should have the *"force and effect*
287 *of law in the Philippine Islands."*

These exceptions and limitations are found in Sect. 13, above quoted.

The rules and Regulations were adopted by the Commission; they were approved by the President of the United States; they were duly submitted by the President to Congress; that body adjourned without taking action thereon, and, on the 26th day of July 1904, by the proclamation of the then Civil Governor these "Rules and Regulations," *become operative in these Islands.* These Rules and Regulations, of course, are embodied in Act No. 926 of the U. S. Philippine Commission, enacted, October 7th 1903, and hereafter referred to.

The remaining Sections quoted (Sects. 14, 15, and 16) confer other and further powers on the Government of the Philippine Islands over the public lands, and also contain other and further limitations.

The rights of property in land, not evidenced by written title, which may have accrued under the treaty of Paris as an obligation of the United States according to the rules of interpretation laid down by the Supreme Court of the United States in the numerously cited decision found in earlier pages of this opinion, are provided for in Sections 14.

By that Section, in addition to the rules and regulations provided for in Section 13, which former rules and regulations require the express approval of the President of the United States and the express or implied approval of Congress, the Government of the Philippines is further authorized and empowered *"to enact rules and regulations and to prescribe terms and conditions to enable persons to perfect their titles to public lands in said Islands who prior to the transfer of sovereignty had fulfilled all or some of the conditions required by the Spanish laws and royal decrees of the Kingdom of Spain for the acquisition of legal titles thereto, yet failed to secure conveyance of title."* The Philippine Commission is also authorized to grant a title without any compensation to any native who
288 had *"actually occupied"* lands by himself or his ancestors prior to August 13th 1898; this amount being limited to sixteen hectares.

By Section 15 and Section 16 of sale are granted to the Commission to *"actual occupants and settlers"* and certain *"prior rights of purchase"* are provided; and the Philippine Government is prevented from selling lands in such actual occupancy of settlers until such settlers and occupants shall have consented thereto or forfeited by laches their preference rights. The limit of sales provided

by these sections is sixteen hectares to each individual, and at the close of the section (Sect. 16) providing for preference rights of purchase "to actual occupants and settlers" this proviso is found: "Provided that the prior right hereby secured to an occupant of land who can show no other proof of title than possession shall not apply to more than sixteen hectares in any one tract."

It is needless in view of the facts found upon this trial to discuss here the question of "prior rights" given under this Act of Congress "to actual occupants and settlers" since the lands in question cannot possibly come within the purview of such law. The Philippine Commission has, however, exercised the power vested in it by the Sections 14, 15 and 16, and the Rules and Regulations provided for in Section 14 will be found in the same Act No. 926 hereinbefore quoted.

The Government of the United States has thus provided for actual occupants and settlers upon the public domain and this Act of Congress conclusively provides that no native of these Islands, however poor and humble, can be deprived of his home and holdings on the public lands to the full extent of a homestead of sixteen hectares. The Government of the Philippine Islands in Act No. 926, have carefully guarded and safeguarded each and every one of these rights and have gone to the very limit of liberality and generosity — construing the provisions above quoted to protect the actual occupants and native settlers and both Congress and the Philip-
289 pine Commission have legislated in such a manner as to more than meet every treaty obligation of the General Government of the United States with Spain touching property rights in land in the Philippines.

Congress has placed the seal of its approval upon Chapter VI of said Act No. 926 of the Act of the Philippine Commission, which chapter is entitled, "Unperfected Titles and Spanish Grant and Concessions"; by virtue of which chapter the Court of Land Registration is given jurisdiction by a procedure expressly provided in said chapter and in some essential particulars varying from the procedure provided in Act No. 496 of the U. S. Philippine Commission, organizing said Court and defining its original jurisdiction and proceedure. The persons who may so apply are specifically described together with the conditions precedent to entitle them to make such application in Sect. 54 of *of* said Chapter VI of Act 926; and among the number thus described are those "who were entitled to apply and did apply for adjustment or composition of title to lands against the Government under the Spanish laws and royal decress in force prior to the royal decree of February thirteenth, eighteen hundred and ninety four, but who failed to receive title therefor through no default upon their part"; as well also, "All persons who were entitled to a gratuitous title to public lands by possessory proceedings under the provisions of articles nineteen and twenty of the royal decree of the King of Spain issued February thirteenth, eighteen hundred and ninety four, and who, having complied with all the conditions therein required, failed to receive title therefor

through no default upon their part", and others, not necessary for the purpose of this case to be quoted.

It is unnecessary to quote in extenso from the provisions made by the Congress of the United States (as contained in Act No. 926 of the Philippine Commission) which now has the force and effect of law in these Islands, as provided in "The Philippines Bill." The applicant's petition has not been presented under the pro-
290 visions of this law, and it is unnecessary for this Court to decide and determine what if any rights he might have if such rights were presented to this Court by virtue thereof. Sect. 78, of Act. No. 926 reads as follows:

Sect. 78. The provisions of this Act shall extend and apply to all provinces and places of the Philippine Archipelago, except the Moro Province, and the Provinces of Lepanto-Bontoc, Benguet, Paragua and Nueva Vizcaya; but the provisions of this Act or of any chapter hereof may at any time by resolution of the Philippine Commission be extended over and put in force in any of the provinces or any part thereof hereby excepted from its operations."

No portion of said Act has, as yet been extended to the province of Benguet except Chap. 5 on townsites, and as these lands in question are situated within the said province of Benguet, Mateo Cariño, the applicant has acquired no rights up to this time under the provisions of said Act. As already stated this Court finds it unnecessary to decide or even express an opinion as to whether any rights could ever be acquired by him under the law.

The Sanitarium Reservation.

In connection with the claim of this applicant to the land in question the following considerations, in connection with the subject just discussed, are disclosed by the evidence and are pertinent.

The Government of the Philippine Islands and the Government of the United States have both taken steps to establish a Sanitarium at Baguio in the Province of Benguet; and by Act No. 297, approved November 11, 1901, the former government provided the funds for the purchase of eighty acres of land and sundry improvements thereon (whatever may have been the title or interest this court has no knowledge nor is it of importance) of one Otto Scherer, and in furtherance of the design of the Commission for a summer Capitol and Sanitarium at Baguio. And on adjacent territory or ground on the 10th day of October 1903 the Government of the United States set aside a tract of land for a military post and a military reservation which reservation included all or a larger portion of the land in question.

The evidence in this case also discloses that the propo-
291 sition for an extensive San-tarium and reservation of lands therefor in Benguet (near Baguio) was not a proposition originating with the American Government in these Islands, nor since the American occupation of these Islands. It had its origin during the days of Spanish sovereignty. It appears that in the

month of July 1895, there was received from the Politico-Military Comandancia of Benguet through the Dirección Civil and the regular official channels for the transmission of such documents to the then General Government of these Islands two petitions from one Mateo Cariño and one each from Ygorrotes shown by the evidence herein to be occupants of tracts adjoining the land in question asking for adjustment and composition for the lands described therein. The lands described in said petitions, both and all of which were dated July 5, 1895, is not specifically described, nor have the petitions themselves been discovered in any of the Archives of to-day although diligent search has been made.

See Defendant's Exhibit "E".

This exhibit corroborates the testimony of Mateo Cariño as to his having presented an application for the adjustment and composition of the land in question at or about the date and thus is taken as proved. This also indicates clearly that the paramount title to this land on July 5, 1905, was recognized by the claimant as vested in the Crown of Spain.

By defendant's Exhibit "F" it is disclosed that on the 18th day of September 1897, there was received through official channels in the Forestry Bureau at Manila for transmission to the Politico-Military Comandancia of Benguet an official notification emenating from the office of the Secretary of the Governor General of the Spanish Government in Manila, and under date of September 16th 1897, and giveing notice to all persons concerned (whether communicated to Mateo Cariño or not the evidence does not disclose) that under no consideration would adjustment and composition for lands in Benguet be considered and evidences of title thereto issued until such times as the Government should designate in a
292 definite manner the lands which the Sanitarium with its dependencies should occupy. This official letter like the petition of the applicant above referred to is not produced nor found in the Government Archives save only in the abstract just quoted.

The inference is inevitable that the Government of Spain was holding all lands to which title had not been issued and situate in the province of Benguet in reserve pending the selection and designation of the lands that it required for public purposes. This was the status of Mateo Cariño and his lands in 1897; what recognition of his claims might have been made or what compensation if any he might have received is a matter of speculation only, but one thing is certain Spain, the owner of the paramount title, denied a title to Mateo Cariño and other Ygorrotes claiming land by possession in the Province of Benguet by virtue of occupation and possession alone, and in the absence of a written title based upon adjustment nor is his condition† and composition under Spanish Royal decrees [is]* changed at this

[*Word enclosed in brackets erased in copy.]
[†In pencil in copy.]

time; save that an actual occupant or settler has his holdings not exceeding sixteen hectares guaranteed to him by the Congress of the United States. Under this guarantee Mateo Cariño has no claim to the land in question since he is not and for many years has not been an actual occupant or settler on the lands in question; it is at the most pasture land and as such is claimed.

Proceedings under the Mortgage Law.

The view that this court takes of the effect of the Act of Congress of March 2, 1901, renders it unnecessary to further consider here the effect of the proceedings had in the Court of First Instance of Union and Benguet under the Mortgage Law; and it has not been urged or presented here for any other purpose apparently than as proof of possession for many years, a fact which is abundantly established by other evidence.

The Military Reservation.

This Court having held that the land in question in this action was at the date of the ratification of the treaty of Paris Crown Lands and as such passed to the Congress of the United States, and
293 Congress having provided for its reservation for Military purposes and thus exempted it from the provisions of Act No. 926 and the "Philippines Bill" the right to the registration of a title thereto based upon prescription only does not appertain to the jurisdiction of the Courts nor is the authority to grant a title thereto vested in the Philippine Commission. If the applicant has any rights thereto his sole remedy is an appeal to the Congress of the United States.

Jurisdiction of this Court.

Since the lands in question were Crown lands of Spain when the sovereignty of the United States over these Islands was acquired from Spain, and as such, passed to the United States as the absolute owner, and free from any equitable claims acquired by the claimant Mateo Cariño, and his ancestors under the Spanish sovereignty which equitable claims might have been recognized by the Crown of Spain, resulting in the issuance to Mateo Cariño of a crown patent and title thereto: Since no such action was taken by the Crown officers and by Sect. 78 of Act 926 of the U. S. Philippine Commission, which Act has received the approval of Congress and has the effect of law, the provisions of said Act have not yet been extended to the Province of Benguet it necessarily follows that, until such time as the United States Philippine Commission or the Congress of the United States shall otherwise provide, neither the Court of Land Registration nor this Court as an appellate Court, has any jurisdiction to grant to the applicant the relief prayed for in his petition. Whatever equitable claims, if any he may have, are subjects to be

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considered by the legislative assemblies of the Islands and of the Congress of the United States and these equities if any can not be adjudicated and created into titles and grants by the action of the Courts, the land in question being undoubtedly public lands such a jurisdiction must be specially and specifically conferred by Congress or by the U. S. Philippine Commission (within the limits and subject to the limitations of the Act of Congress of July 1, 1902).

No such legislation has been had.

294 In delivering the opinion of the Supreme Court of the United States in the case of Burgess *vs.* Gray, 16 How. (U. S.) 62, the Court says:

"Now as regards any equitable and inc*oh*ate title which the petitioner may possess under the treaty with France, it is quite clear that the State Court has no jurisdiction over it. For it has been repeatedly held by this court that, under that treaty, no inc*oh*ate or imperfect title derived from the French or Spanish authorities can be maintained in a court of justice *unless jurisdiction to try and decide it has first been conferred by Act of Congress.* Certainly no such jurisdiction has been given to any state court. And the Supreme Court of Missouri were right in sustaining the demuerer, as to this part of the petition, even if it had been of opinion, that the permit to settle on the land *and the long possession of it under the Spanish Government, gave him an equitable right, by the laws of Spain, to demand a perfect and legal title.* The court has no jurisdiction upon the question and the judgment of the State Court cannot be reversed unless the plaintiff can show that he had complete and perfect title derived from the Spanish or French authorities; or a legal or equitable title under the laws of the United States."

See also,

Alexander *vs.* Roulet, 13 Wall 386.
Doran *vs.* C. P. Ry. Co., 24 Cal. 258.
Brees *vs.* Louviere, 37 La. An. 736, 739.
Gibson *vs.* Choteau, 13 Wall 92.

The special defenses presented by the Government of the United States and the Government of the Philippine Islands are both well taken and this Court has no jurisdiction to entertain this petition of Mateo Cariño nor to grant the relief therein prayed for.

The Court therefore disallows the prayer of the petition and orders that the same be dismissed with costs of both courts.

Done in open court this 4th day of April 1905, at Baguio in the Province of Benguet, P. I.

CHARLES H. BURRITT,
Judge Mountain District.

295 to which judgment the applicant then and there duly excepted.

Thereupon the applicant filed a motion in the above entitled cause requesting the Court to amplify its finding of fact so as to include therein the value of the land in question. Said motion was granted, and the Court made an additional finding of fact to the

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effect that the value of the land here in controversy is twenty-five thousand dollars and upwards, U. S. currency.

Within the time required by law, the applicant filed a motion for a new trial of said action on the ground that the findings of fact were plainly and manifestly against the weight of evidence; that the decision and judgment of the Court was contrary to law, which motion was overruled by the said Court, to which ruling and decision of the Court the applicant then and there duly excepted, and gave a notice of an intention to appeal and perfect a bill of exceptions to the Supreme Court of the Philippine Islands. Upon the application of the applicant the Court extended the time to prepare and serve a bill of exceptions to and including 22nd day of May, 1905.

The applicant, by his counsel, on the — day of May, 1905, and within the period allowed by law for the presentation of the bill of exceptions, and during the term in which said judgment was rendered, presents this bill of exceptions to the Judge of the Court and asks that the same be approved, perfected, allowed and signed by the Judge of said Court.

Manila, P. I., May 19, 1905.

COUDERT BROTHERS,
JOHN W. HAUSSERMANN,
CHARLES C. COHN,
D. R. WILLIAMS,
Attorneys for Applicant.

296 Copy of the foregoing bill of exceptions received by the undersigned this 19th day of May, 1905.

A. BASSETT,
Attorney for the Government of the United States of America.

A. BASSETT,
Attorney for the Government of the Philippine Islands.

I hereby certify that on this 22nd day of May, 1905, at 9 a. m. there has been received in this office the preceding writing.

WM. M. BROWER,
Escribano,
Por LUCIO ALOGAN,
Delegado Clerk Court First Instance of Benguet.

UNITED STATES OF AMERICA, *Philippine Islands:*

Mountain Judicial District.

Court of First Instance of the Province of Benguet.

The above Bill of Exceptions is hereby certified to be true and correct.

CHARLES H. BURRITT,
Judge Mountain Judicial District Court of First Instance, Province of Benguet, P. I.

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Filed in the Clerk's office of the Supreme Court of the Philippine Islands this 29 day of May, 1905.
J. E. BLANCO, *Clerk*,
By H. D. McGEORGE, *Deputy*.

10-40 a. m.

297 After hearing upon the preceding record the Supreme Court of the Philippine Islands rendered the following decision:

(No. 2746. December 6, 1906.)

MATEO CARIÑO, Petitioner and Appellant,
vs.
THE INSULAR GOVERNMENT, Respondent and Appellee.

1. Public Lands; Prescription; Statute of Limitations.—The statute of limitations did not run against the Crown of Spain as to its public agricultural lands in these Islands, following Valenton *et al. vs.* Murciano, and other cases.
2. *Id.; id;* Presumption of Grant.—There is in these Islands no conclusive presumption of a grant from the Grovernment founded merely upon long possession.
3. *Id.; id.;* Public Land Act.—Act No. 926, section 54, paragraph 6, is not applicable to this case.

Appeal from a Judgment of the Court of First Instance of Benguet.

The facts are stated in the opinion of the Court.
Coudert Brothers, for appellant.
Attorney-General Wilfley, for appellee.

WILLARD, *J.:*

The appellant, on the 22nd of June, 1903, by his attorney in fact, Metcalf A. Clarke, filed a petition in the Court of Land Registration asking that he be inscribed as the owner of a tract of land in the municipality of Baguio, in the Province of Benguet, containing 146 hectares. The Government of the Philippine Islands appeared in the Court of Land Registration and opposed the petition. The Government of the United States also appeared and opposed the petition on the ground that the land was part of the military reservation of Baguio. Judgment was entered in the Court of Land Regis-
298 tion in favor of the petitioner, from which judgment the defendants appealed in accordance with the law then in force to the Court of First Instance of the Province of Benguet. The case was therein tried *de novo*, and judgment was entered dismissing the petition. The petitioner has brought the case here by bill of exceptions.

The petitioner presented no documentary evidence of title, except a possessory information obtained in 1901. By the provisions of the

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Mortgage Law, under which the possessory information was obtained (art. 394), it produced only those effects which the laws give the mere possession.

The petitioner not having shown any title from the Government, and the land being agricultural, the case is governed by the decision of this Court in the cases of Valenton *et al. vs.* Murciano (2 Off. Gaz., 434, No. 22), Casino *et al. vs.* Valdez *et al.* (No. 2468, decided July 16, 1905), and Tiglao *vs.* The Insular Government (No. 2498, just decided). In these cases it was held that the mere possession of land such as that in controversy in this case would not give the possessor any title thereto as against the Government. In other words, that the statute of limitations did not run against the *the* State in reference to its agricultural lands.

The petitioner, however, insists that although the statute of limitations as such did not run against the Government of Spain in the Philippine Islands, yet a grant is to be conclusively presumed from immemorial use and occupation. To say that the presumption of a grant is a presumption of law is, in our opinion, simply to say that it amounts to a statute of limitations; and for a court to hold that the statute of limitations does not run against the Govern-
299 ment as to its public agricultural lands, and at the same time to hold that if a person has been in possession of such lands for thirty years it is conclusively presumed that the Government has given him a deed therefor, would be to make two rulings directly inconsistent with each other.

Considered as a presumption of fact, the contention could not be sustained in this particular case. Here the surrounding circumstances are incompatible with the existence of grant. It is known that for nearly three hundred years all attempts to convert the Igorots of the Province of Benguet to the Christian religion completely failed, and that during that time they remained practically in the same condition as they were when the Islands were first occupied by the Spaniards. To presume as a matter of fact that during that time, and down to at least 1880, the provisions of laws relating to the grant, adjustment, and sale of public lands were taken advantage of by these uncivilized people and that they applied for and obtain- deeds from the Government for these lands, would be to presume something which did not exist. The appellant says in his brief (p. 10):

The Igorot, no less than the American Indian, is an aborigine, and is equally ignorant of the forms of law and procedure necessary to protect his interests.

There is, moreover, in the case evidence that in 1894 the petitioner sought to obtain title from the Government in accordance with the laws then in force. In 1901 he made a contract with Metcalf A. Clarke, by the terms of which he agreed to sell the land to Clarke for P6,000 when he obtained title thereto from the Government, and in this contract he does not say that he is the owner, but simply that he is in possession thereof. The court below found that the land is now worth upwards of P50,000.

300 The possession of the land has not been of such character as to require the presumption of a grant. No one has lived

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upon it for many years. It was never used for anything but pasturage of animals, except insignificant *portion* portions thereof, and since the insurrection against Spain it has apparently not been used by the petitioner for any purpose.

The petitioner relies upon the case of The United States *vs.* Chavez (159 U. S., 452) and the case of The United States *vs.* Chavez (175 U. S., 509). In the case of Hays *vs.* The United States (175 U. S., 248) the court said at page 261:

But this presumption is subject to the limitation that where title is claimed from a deed which is shown to be void, it will not be presumed that there was an independent grant (Smith *vs.* Highbee, 12 Vermont, 113), or where surrounding circumstances are inconsistent with the theory of a grant (Townsend *vs.* Downer, 32 Vermont, 183).

The substance of this doctrine is that lapse of time may be treated as helping out the presumption of a grant, but where a void grant is shown, it affords no presumption that another valid grant was made. Nor does such presumption arise of the surrounding circumstances are incompatible with the existence of a grant. In the case under consideration we can not find any evidence which justifies in believing that a legal grant can have been made, and under the circumstances we can not consider possession since the date of the treaty as dispensing with the requirement that the title, if not perfect at that time, was one which the claimant would have had a lawful right to make perfect, had the territory not been acquired by the United States.

In the case of Chavez *vs.* The United States (175 U. S., 552) the court made the following statement:

Finally, it distinctly appears that the possession of the parties is insufficient in length of time to prove a valid title. In United States *vs.* Chavez (159 U. S., 452) the possession was under the claim of a grant made by the Governor of New Mexico to the alleged grantees. The grant had been lost, but it has been seen and read by the witnesses, and its existence had been proved by evidence sufficient, as was stated in the opinion (p. 460), to warrant "the finding of the Court below that the complainant's title was derived from the Republic of Mexico, and was complete and perfect at the date when the United States acquired sovereignty in the territory of New Mexico within which the land was situated." We do not question the correctness of the remarks made by Mr. Justice Shiras in regard to evidence of possession and the presumptions which may under certain circumstances be drawn as to the existence of a grant.

301 We do not deny the right or the duty of a court to presume its existence in a proper case, in order to quiet a title and to give to long continued possession the quality of a rightful possession under a legal title. We recognized and enforced such rule in the case of United States *vs.* Chavez, decided at this term, in which the question is involved. We simply say in this case that the possession was not of a duration long enough to justify any such inference.

There is no proof of any valid grant, but on the contrary the evidence offered by the plaintiff himself and upon which he bases the title that he asks the court to confirm, shows the existence of a grant

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from a body which had no legal power to make it, and which, therefore, conveyed no title whatever to its grantee, and the evidence is, as given by the plaintiff himself, that it was under this grant alone that possession of the lands was taken. We cannot presume (within the time involved in this case) that any other and valid grant was ever made. The possession of the plaintiff and of his grantors up to the time of the treaty of Guadalupe Hidalgo, in 1848, had not been long enough to presume a grant. (Crespin *vs.* United States, 168 U. S., 208; Hayes *vs.* United States, 170 U. S., 637, 649, 653; Hays *vs.* The United States, ante, 248.) The possession subsequently existing, we can not notice. Same authorities.

As we understand it, it is well settled in the United States that prescription does not run against the Government as to its public lands—in other words, that if a person desires to obtain title to the public lands of the United States situated within the boundaries of the States, he must do so in the way pointed out by the law. We do not understand that a person in possession of unsurveyed public land in the State of Minnesota, for example, whose ancestors had occupied that land for forty years, could maintain in court a claim that he was the legal owner of the lands by reason of the presumption that the United States had granted the land to his ancestors, a presumption founded not upon any proceedings taken in the General Land Office to acquire a patent thereto, but upon the mere possession for that length of time.

The same is true of the public lands of Spain in the Philippine Islands. In the case of Valenton *et al. vs.* Murciano it was said:

> While the State has always recognized the right of the occupant to a deed if he proves a possession for a sufficient length of time,
> 302 yet it has always insisted that he must make the proof before the proper administrative officers, and obtain from them his deed, and until he did that the State remained the absolute owner.

But in any event, and whatever the law may be elsewhere, it seems clear that this doctrine of presumptive grant can not apply to the Philippines in view of the Spanish legislation for the Indies. From time to time there were promulgated laws which required the persons in possession of public lands to exhibit their titles or grant thereto. If these titles or grants were found to be good, they were confirmed, but if they were not, or if the persons had no grants or titles at all, they were evicted from the land. For example, in law 14, title 12, book 4, Recompilation of the Laws of the Indies, it is stated:

> We therefore order and command that all viceroys and presidents of pretorial courts designated, at such times as shall to them seem most expedient, a suitable period within which all possessors of tracts, farms, plantations, and estates shall exhibit to them and to the court officers appointed by them for this purpose, their title deeds thereto. And those who are in possession by virtue of proper deeds and receipts or by virtue of just prescriptive rights shall be protected, and all the rest shall be restored to us to be disposed of at our will.

In the royal cedula of October 15, 1754, it was provided—

> that any and all persons who, since the year 1700, and up to the date of the promulgation and publication of said order, shall have occupied royal lands, whether or not the same shall be cultivated or

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tenanted, may, either in person or through their attorneys or representatives, appear and exhibit to said subdelegates the titles and patents by virtue of which said lands are occupied. Said subdelegates will designate as the period within which such documents must be presented a term sufficient in length and proportionate to the distance the interested party may have to travel for the purpose of making the presentation. Said subdelegates will at the same time warn the parties interested that in case of their failure to present their title deeds within the term designated, without a just and valid reason therefor, they will be deprived of and evicted from their lands, and they will be granted to others.

In the regulations of June 25, 1880, it was provided as follows:

Art. 8. If the interested parties shall not ask an adjustment of the lands whose possession they are unlawfully enjoying within
303 the time of one year, or, the adjustment having been granted by the authorities, they shall fail to fulfill their obligation in connection with the compromise, by paying the proper sum into the treasury, the latter will, by virtue of the authority vested in it, reassert the ownership of the State over the lands, and will, after fixing the value thereof, proceed to sell at public auction that part of the same which either because it may have been reduced to cultivation or is not located within the forest zone is not deemed advisable to preserve as State forest reservations.

In the royal decree of the 13th of February, 1894, published in the Official Gazette of Manila of the 17th of April, 1894, it is provided in article 4 as follows:

Art. 4. The title to all agricultural lands which were capable of adjustment (composicion) under the royal decree of the 25th of June, 1880, but the adjustment of which has not been sought at the time of the promulgation of this decree in the Gaceta of Manila, will revert to the State. Any claim to such lands by those who might have applied for the adjustment of the same, but who have not done so at the above mentioned date, will not avail them in any way or at any time.

In view of these provisions of the law, it seems to us impossible to say that as to the public agricultural lands in the Philippines there existed a conclusive presumption after a lapse of thirty or any other number of years that the Government of Spain had granted to the possessor thereof a legal title thereto.

The plaintiff is not entitle- to the benefits of paragraph 6 of section 54 of Act No. 926, the Public Land Act, for the reason that that act is not applicable to the Province of Benguet. The judgment of the court below is affirmed, with the costs of this instance against the appellant.

After the expiration of twenty days, let judgment be entered accordingly, and ten days thereafter the case will be returned to the Court below for execution. So ordered.

Arellano, C. J., Torres, Carson, and Tracey, JJ., concur.

Mapa, J., concurs in the result.

Judgment affirmed.

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304 UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

Judgment Book 4, f—, Registry No. 2746.

MATEO CARIÑO, Plaintiff and Appellant,
vs.
THE INSULAR GOVERNMENT, Defendant and Appellee.

Judgment. December 28, 1906.

This Court, being possessed of due power and authority to hear the above entitled cause, which has been submitted by both parties for determination, and having considered the same in the light of the Record and, on the 6th day of December, 1906, having rendered its decision and entered its order for judgment, therefore.

By virtue of the said order, the judgment appealed from the Court of First Instance of Benguet dated April 4, 1905, is hereby affirmed with costs on the appellant.

It is further ordered that the defendant recover from the plaintiff costs in the sum of $40.00.

J. E. BLANCO,
Clerk of the Supreme Court of the Philippine Islands.
(Court Stamp.)

305 UNITED STATES OF AMERICA, *Philippine Islands:*

In the Supreme Court of the Philippine Islands.

R. G. 2746.

MATEO CARIÑO, Plaintiff and Appellant,
vs.
INSULAR GOVERNMENT, Defendant and Appellee.

To the Attorney General of the Philippine Islands:

Please take notice that on Monday, the 31st day of December, 1906, at 9:00 o'clock A. M., or as soon thereafter as counsel can be heard, the accompanying petition for a writ of error in the above entitled cause will be presented for the consideration of the Court.

Manila, P. I., Dec. 29, 1906.

COUDERT BROTHERS,
JOHN W. HAUSSERMANN,
CHARLES C. COHN,
D. R. WILLIAMS,
H. W. VAN DYKE,
Attorneys for Appellant.

Service of the above notice hereby accepted this 29 day of December, 1906.

R. D. BLANCHARD,
Ass't Att'y, Bureau Justice.

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306 UNITED STATES OF AMERICA, *Philippine Islands:*

In the Supreme Court of the Philippine Islands.

R. G. 2746.

MATEO CARIÑO, Plaintiff and Appellant,
vs.
INSULAR GOVERNMENT, Defendant and Appellee.

Petition for Writ of Error.

And now comes Mateo Cariño, the plaintiff herein, and says:

That on or about the 28th day of December, 1906, the Supreme Court of the Philippine Islands entered a judgment herein in favor of the defendant and against the plaintiff, in which judgment and the proceedings had prior thereto in this cause certain errors were committed to the prejudice of this plaintiff, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore this plaintiff prays that a writ of error may issue in this behalf out of the Supreme Court of the United States for the correction of errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

COUDERT BROTHERS,
JOHN W. HAUSSERMANN,
CHARLES C. COHN,
D. R. WILLIAMS,
H. W. VAN DYKE,
Att'n'ys for Appellant.

Service of the foregoing petition acknowledged this 29 day of December, 1906.

R. D. BLANCHARD,
Ass't Att'y, Bureau of Justice, for Attorney General.

307 UNITED STATES OF AMERICA, *Philippine Islands:*

In the Supreme Court of the Philippine Islands.

R. G. 2746.

MATEO CARIÑO, Plaintiff and Appellant,
vs.
INSULAR GOVERNMENT, Defendant and Appellee.

Assignment of Error.

The plaintiff in this action, in connection with his petition for a writ of error, makes the following assignment of errors upon which

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he will rely for the prosecution of the writ of error in the above entitled cause:

I.

The court erred in holding that prescription did not run against public agricultural lands of the Kingdom of Spain in the Philippine Islands during Spanish sovereignty.

II.

The court erred in holding that a grant of title of public agricultural lands in the Philippine Islands could not be presumed from immemorial use and occupation.

III.

The court erred in holding as a conclusion of law from the facts of record that title to the land involved in this proceeding had not vested in the plaintiff.

308 IV.

The Court erred in holding that Mateo Cariño, plaintiff herein, was not the owner in fee simple of the land involved in this proceeding, and was not entitled to its registration under the provisions of the Land Registration Act of the Philippine Islands.

V.

The court erred in affirming the decision of the trial court ordering the dismissal of plaintiff's application.

COUDERT BROTHERS,
JOHN W. HAUSSERMANN,
CHARLES C. COHN,
D. R. WILLIAMS,
H. W. VAN DYKE,
Attorneys for Plaintiff and Appellant.

309 UNITED STATES OF AMERICA, *Philippine Islands:*

In the Supreme Court of the Philippine Islands.

R. G. 2746.

MATEO CARIÑO, Plaintiff and Appellant,
vs.
INSULAR GOVERNMENT, Defendant and Appellee.

Order Allowing Writ of Error.

This 4th day of January 1907, comes the plaintiff, by his attorneys, and files herein and presents to the court his petition praying for the allowance of a writ of error and assignment of errors intended to be urged by him, praying also that a transcript of the

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record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had which are proper in the premises.

On consideration whereof the court does allow the writ of error upon the plaintiff giving bond according to law in the sum of $500.00, U. S. Currency, to cover costs.

CHARLES A. WILLARD,
Associate Justice Supreme Court, Philippine Islands.

310 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable Judges of the Supreme Court of the Philippine Islands, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment in a case which is in the said court before — or some of you, wherein Mateo Cariño, of the Province of Benguet, appears as plaintiff, and the Insular Government of the Philippine Islands, as defendant, a manifest error has happened to the great damage of the said Mateo Cariño as by his complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the plaintiff aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, directly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ; so that you may have the same in Washington on the thirtieth day of April, next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 4th day of January,
311 in the year of our Lord one thousand nine hundred and ——.

J. E. BLANCO,
Clerk of the Supreme Court of the Philippine Islands.

The foregoing writ of error is allowed.

CHARLES A. WILLARD,
Associate Justice of the Supreme Court of the Philippine Islands.

312 THE UNITED STATES OF AMERICA, *ss:*

To the Attorney General of the Philippine Islands, Greeting:

You are hereby cited and admonished to appear at the Supreme Court of the United States, to be holden at the City of Washington on the 30th day of April, next, pursuant to a writ of error filed in the Clerk's office of the Supreme Court of the United States, wherein

CLOSE IN CENTER

Mateo Cariño, of the Province of Benguet, is plaintiff in error, and the Insular Government is defendant, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected and speedy justice be done to him in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 4th day of January, in the year of our Lord one thousand nine hundred and seven.

CHARLES A. WILLARD,
Associate Justice of the Supreme Court of the Philippine Islands.

Receipt of above citation is hereby admitted and service thereof accepted this 4 day of December, 1906.

GEO. R. HARVEY,
Ass't Attorney General.

313 UNITED STATES OF AMERICA, *Philippine Islands:*

In the Supreme Court of the Philippine Islands.

R. G. 2746.

MATEO CARIÑO, Plaintiff and Appellant,
vs.
INSULAR GOVERNMENT, Defendant and Appellee.

Bond on Writ of Error.

Know all men by these presents, that we, Metcalf A. Clarke, attorney in fact for Mateo Cariño, as principal, and John W. Haussermann and J. R. Reed, as sureties, are held and firmly bound unto the Government of the Philippine Islands in the full and just sum of Five Hundred (500) Dollars, United States Currency, for the payment whereof to the Government of the Philippine Islands we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 4th day of January, 1907.

Whereas, lately at a session of the Supreme Court of the Philippine Islands in a suit pending in said court, wherein Mateo Cariño was plaintiff and the insular Government of the Philippine Islands, defendant, a judgment was rendered against said plaintiff, and said plaintiff having obtained a writ of error and filed a copy thereof in the Clerk's Office of said court to reverse the judgment in the
314 aforesaid suit, and a citation directed to the said Insular Government, through the Attorney General thereof, citing and admonishing him to be and appear at a certain session of the Supreme Court of the United States to be holden at the City of Washington during the April, 1907, term of said court.

Now, the condition of the above obligation is such that if the said Mateo Cariño shall prosecute said writ of error to effect and answer

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all costs that may be awarded against him if he fails to make good his plea, then the above obligation to be void; otherwise to remain in full force and effect.

METCALF A. CLARKE.
JOHN W. HAUSSERMANN.
J. R. REED.

Sealed and delivered in the presence of:—
D. R. WILLIAMS.
A. W. BEAM.

UNITED STATES OF AMERICA, *Philippine Islands, ss:*

At the City of Manila, John W. Haussermann and J. R. Reed, sureties on the within obligation, being duly sworn, depose and say, each for himself, that he is a resident and property holder in the City of Manila, and that he is worth more than the amount ex-
315 pressed in the said obligation as a penal sum, over and above all his debts and obligations exclusive of property exempt from taxation.

JOHN W. HAUSSERMANN.
J. R. REED.

Subscribed and sworn to before me this 4th day of January, 1907, exhibiting Cedulas No. B175128, dated Mar. 24, 1906, and No. A-1134, dated Jan'y 4, 1907, respectively, issued in Manila.

D. R. WILLIAMS,
Notary Public.

My Commission Expires December 31st 1908.

The within bond approved by
CHARLES A. WILLARD,
Associate Justice of the Supreme Court of the Philippine Islands.

316 UNITED STATES OF AMERICA, *Philippine Islands:*

In the Supreme Court of the Philippine Islands.

R. G. 2746.

MATEO CARIÑO, Plaintiff and Appellant,
vs.
THE INSULAR GOVERNMENT, Defendant and Appellee.

It is hereby stipulated by and between the parties to the above-entitled action that the foregoing papers are true and correct copies of the pleadings, evidence, exhibits, decisions and proceedings in the record of the Supreme Court of the Philippine Islands in said cause, and constitute all the essential papers necessary to a determi-

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nation of the writ of error granted herein to the Supreme Court o the United States.

Dated this 15th day of March, 1907.

HAUSSERMANN, COHN & WILLIAMS,
H. W. VAN DYKE,
Attorneys for Plaintiff and Appellant.
R. D. BLANCHARD,
Ass't Att'y Bureau Justice, Attorney for Defendant and Appellee.

RDB-vb.

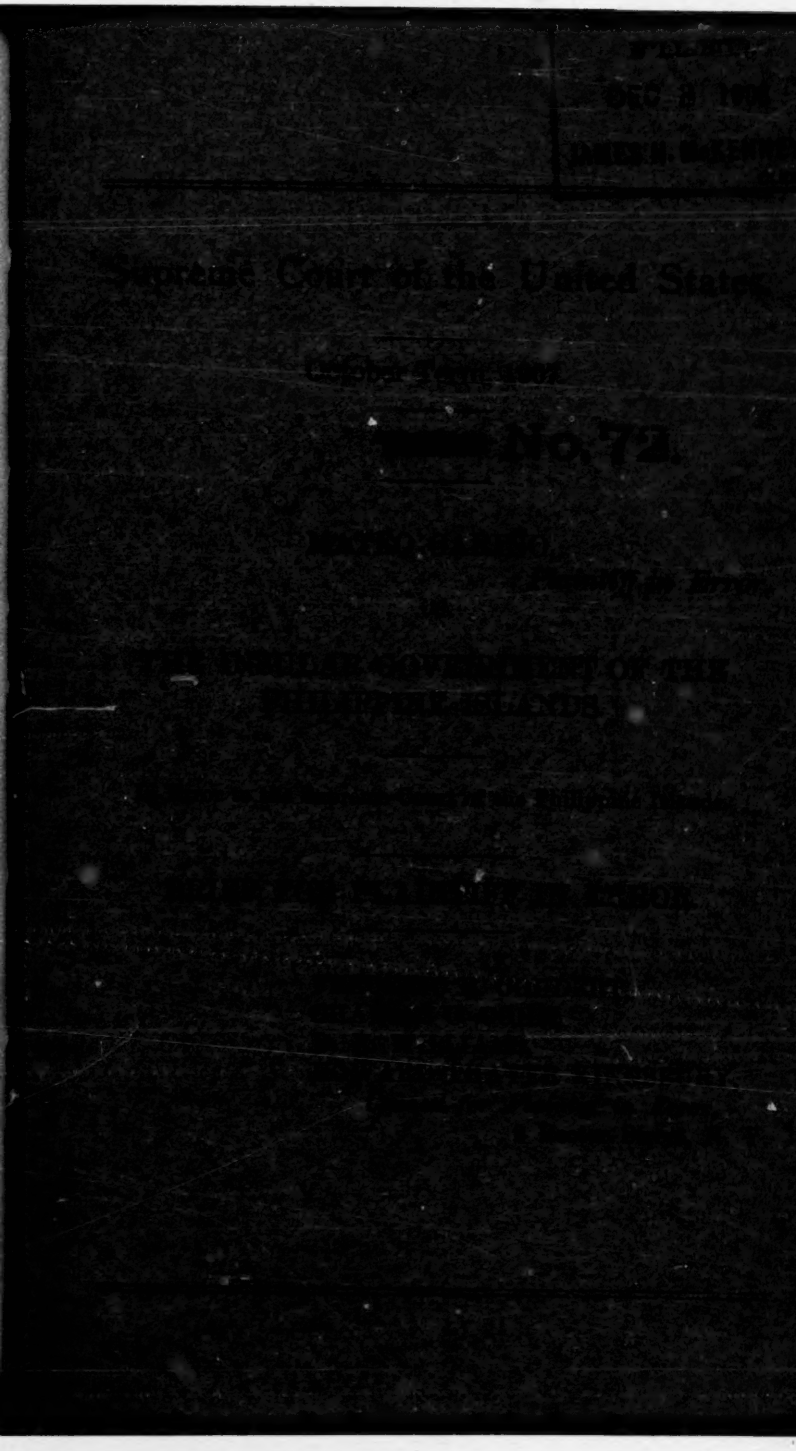
317 UNITED STATES OF AMERICA, *Philippine Islands, ss:*

In obedience to the foregoing writ of error, I hereby transmit t the Supreme Court of the United States a true and complete trans script in English of the record and proceedings in the foregoing en titled cause, this 6th day of March, 1907.

[Seal Corte Suprema, Islas Filipinas.]

J. E. BLANCO,
Clerk, Supreme Court, P. I.

Endorsed on cover: File No. 20,690. Philippine Islands suprem court. Term No. 298. Mateo Cariño, plaintiff in error, *vs.* Th Insular Government of the Philippine Islands. Filed May 2d, 190 File No. 20,690.



CLOSE IN CENTER

Supreme Court of the United States,

October Term, 1907.

No. 298.

MATEO CARIÑO, Plaintiff in Error, AGAINST THE INSULAR GOVERNMENT OF THE PHILIPPINE ISLANDS.	Writ of Error to the Supreme Court of the Philippine Islands.

Brief on Behalf of the Plaintiff in Error.

Statement.

This is a Writ of Error to the Supreme Court of the Philippine Islands.

The plaintiff in error began a proceeding in June, 1903, under the Land Registration Act (Act No. 496, U. S. Phil. Comm.) for the registration of a title to some 370 acres of land, situated in the Municipality of Baguio, Province of Benguet. The Court of Land Registration granted the application, and in accordance with the statutory procedure, the Attorney General (both in behalf of the Government of the Philippine Islands, and also in behalf of the United States) appealed to the Court of First Instance in the Mountain Judicial District in and for the Province of Benguet in which the case was tried *de novo;* that Court made full findings of fact, and held that the petitioner was not entitled to registration be-

cause he could show no written grant, thus reversing the decision of the Court of Land Registration (fol. 255).

An appeal having been taken to the Supreme Court of the Philippine Islands, the decision of the Court of First Instance was affirmed and the present Writ of Error was sued out.

The Court of First Instance finds the amount to be in excess of twenty-five thousand dollars, hence the jurisdiction of this Court attaches (fol. 295). Moreover, the plaintiff in error invokes the protection of the Eighth Article of the Treaty of Paris and the Fifth Amendment to the Constitution.

The Facts.

The facts in the case are undisputed.

They are found by the Court of First Instance substantially as stated by the Court of Land Registration and the plaintiff in error has no quarrel with the facts as so found. A number of witnesses were examined, but there was no real contradiction in their testimony and the questions before this Court are purely questions of law.

Mateo Cariño, the plaintiff in error, is an Igorrote and native of the Province of Benguet, P. I., 45 years of age. His father Pablo Cariño was a resident of the same province. His grandfather Bangley also lived upon the land and had occupied it at a period more than fifty years prior to the date of the Treaty of Paris (April 11, 1899) (Rec., fol. 263), and some of the testimony as to the age of the fences would indicate occupation for a period running back at least 100 years (Rec., fol. 170). Upon this land he had made his home and his residence; cultivated thereon camotes (potatoes) and palay (rice) "and occupied a house thereon, and built and caused to be built on and about said lands sundry sod and stone fences which with natural obstructions (and the employment of a herder, not so much to hold the cattle within the pasture as to protect the herds from theft), consti-

tuted an enclosure, wherein he pastured his cattle." (Rec., fols. 259-60.)

While the Court does not find that all the land was enclosed by fences, it finds that there were stone fences, sod fences and barbed wire covering a portion of the land and that such fences were so constructed that natural obstacles were taken advantage of, thus obviating the necessity of enclosing the whole tract with a fence. The land as so fenced made "a fenced pasture enclosure sufficient for the holding and pasturing of his cattle according to the custom of the country." (Rec., fol. 260.)

It appears that these fences were very ancient, as Mr. Haywood, the Civil Engineer, called upon behalf of the Government, who had examined and surveyed this tract of land, testified that some of them, at least, were 100 years old and others at least 40 or 50 years old. In fact there is no evidence to contradict the fair inference that the tenure of the Cariño family went back to remote antiquity, perhaps antedating the arrival of Magellan. (Rec., fols. 170, 177, 179 and 181.)

Pablo Cariño, plaintiff's father, a short time before his death, divided his property among his children by conveyance in accordance with the Igorrote's custom and forms (a kind of a livery of seizin) and the land in question was given to Mateo Cariño. (Rec., fol. 34.)

Mateo Cariño himself never actually lived upon said land, but up to 1903 occupied and used the said lands as pasture lands for his cattle, constructing, in addition to the old fences maintained by his grandfather, other fences of wire. (Rec., fol. 261.)

Precisely how long the Cariño family had occupied this tract of land was not found; but it evidently runs back to a period "when the memory of man runneth not to the contrary," for the Court finds "that as pasture land the time during which the land in question was claimed, occupied and used by Mateo Cariño, Pablo Cariño, his father, and Bangley, his grandfather, exceeds fifty years,

counting back from the time of the American occupation, and the ratification of the Treaty of Paris." (Rec., fol. 261.)

It appears that sometime during the period between 1901 and 1902, the Government of the Philippine Islands laid out and opened a public road through and across the lands in question. Mateo Cariño protested against this invasion of his lands to the Provincial Government of Benguet, the Hon. H. P. Whitmarsh (Rec., fols. 126, 262), and posted notices on such land, which notices were torn down and destroyed. At about the same time an American, named MacDonald, and another named Reavis, severally squatted upon portions of such land, but being informed by Cariño and others of Cariño's undisputed ownership of the land, removed therefrom. (Rec., fol. 262.)

By reason of the action of the Insular Government and the destruction of the fences incident to the making of the road, as well as because of loss of many cattle by reason of the rinderpest, the land could no longer be used by Cariño and he has not since endeavored to pasture cattle thereon; and furthermore, it appears that a military reservation of the United States was established on a part of said land on the 10th of October, 1903, and has been occupied as such ever since. (Rec., fol. 262.)

Not only for more than fifty years prior to the date of the ratification of the Treaty of Paris, but ever since the American occupation, the Cariño family has claimed to be the owner of said land and "their claim of ownership thereto has been generally known and recognized and respected by the Igorrotes of the neighborhood and vicinity." (Rec., fol. 263.) Nor was their title ever questioned by the Spanish authorities.

The Government of the United States, however, and that of the Philippine Islands, never formally recognized the claim of Cariño, but on the contrary have taken possession of his property and used portions for a military sanitarium.

No documentary title appears ever to have been issued by the Spanish Government to Cariño, nor did the Igorrotes ever have or require paper titles, but held land under their own laws and customs, Spanish legislation from the earliest times having recognized and respected the Indian ownership. There is no finding, evidence or suggestion, that the Spanish Government ever claimed the land in question as a part of the public domain, or in any way treated it as such.

It appeared that under the Spanish Régime, both in 1893-4 and again in 1896-7, Cariño made application to the Politico-Military Commandante of Benguet for a documentary title to said lands, but "the Court finds as a fact, that no title was ever issued by the Spanish Government in these Islands based upon or as a result of either or any of these applications for adjustment and composition." (Rec., fol. 266.)

A search of the Spanish archives was made, but no such petition was found and no reference to any such application, save only an abstract from the letter book of the archives which "may or may not refer to the lands in question" and which reads as follows:

> "Official letter from the Commandancia of Benguet remitting petition for the denouncement of lands of the Igorrote Mateo Cariño";

and another extract which has no apparent direct connection with Mateo Cariño's application:

> "that under no consideration can lands in Benguet be conceded until such time as those lands are designated in a definite manner that the Sanitarium and the other dependencias of the same ought to occupy." (Rec., fol. 267.)

Thus the official records contain no competent or material evidence whatever in regard to Cariño's applications. He himself, however, testified that he had made

some applications for a paper title. (Rec., fols. 110-112.) He was asked:

"Q. Do you know why you did not obtain that paper title?

A. Yes.

Q. Why?

A. No; because Governor Martinez, at the same time that we presented the petition to him told us that it was not necessary for us to have any document, *because the land belonged to us, and no one could usurp them or take them from us.*" (Rec., fol. 111.)

William F. Pack, Provincial Governor of Benguet, a witness for the Government and who knew Mateo Cariño and the land in question, testified:

"Mateo is a truthful man."

And again:

"Q. What is the reputation of Mateo Cariño in this vicinity, for integrity and veracity?

A. There is none better in the world. I do not care to convey an imputation against him." (Rec., fol. 77.)

And again:

"During all the time that you have been Governor of this Province is it not a fact that Mateo Cariño was in the exclusive possession of that land in question, except, of course, such possession as the military authorities have and the reservation made by Act 636?

A. He was; there was no one else using that land." (Rec., fol. 79.)

Evidence was adduced to show that Cariño had sold an option on the land to one Clark of Manila, which option had been registered, but this evidence seems to have

been adduced simply for the purpose of influencing the Court to believe the claim to be merely speculative. That it did not have this effect, however, is evident from the statement of the opinion that:

> "The court does not share in the anxiety of the counsel as to the necessity for the protection of the Igorrote Mateo Cariño, from 'speculators' nor does the court see anything fraudulent or inequitable in this contract, nor in the negotiation of the same by Mr. Clarke. It seems to be a speculation on the part of Mr. Clarke in all respects legitimate and honorable. So far as this case is concerned neither the option contract, nor the voluntary conclusions and statements quoted from the Governor Pack letter, as to the motives that actuated Mr. Clarke in negotiating this contract serve to influence this Court in any degree in its opinions and conclusions." (Rec., fol. 273.)

In February, 1901, Cariño instituted a possessory proceeding in the Court of First Instance of La Union and Benguet under Art. 390 *et seq.* of the Mortgage Law. (Translation of the Mortgage Law for Cuba, Porto Rico and the Philippines, 1893, War Dept. 1899, Govt. Ptg. Office.)

This law provides that no document shall be admitted in evidence in the ordinary courts or before the administrative officers of the Government unless it has been first recorded (Art. 389), and continues as follows:

> "Art. 390. To facilitate the compliance of the preceding article to *owners who lack a recorded title of ownership*, no matter at what period the acquisition took place, they shall be permitted to record their interest by previously proving their possession, before the Judge of First Instance of the place where the estates are located, with the consent of the Department of Public Prosecution and citation of the adjacent property owners, should

they desire to record the absolute ownership of some estate, and with the citation of the owner or other participants in the ownership, should they desire to record some property right."

Minute provision is then made for the procedure to be followed; the natural location, boundaries, etc., of the land surveyed must be duly filed and proper witnesses must testify, etc.

In accordance with this law, together with Arts. 436, 438 and 440 of the Regulations for the execution of said Mortgage Law, Mateo Cariño received from the Court of First Instance a decree in his favor in part as follows:

> "Whereas according to the provisions of Articles 390 of the Mortgage Law, the proprietor, who may be lacking a written title of ownership shall be able to record his right, previously proving his possession before the Judge of First Instance of the locality wherein the lands are situate:
>
> Whereas, it has been proved in this proceeding, by the written testimony taken herein by Don Mateo Cariño, *that he possesses, in his own name and by title of inheritance, from time immemorial* the lands hereinbefore described; and that the witnesses who have testified herein are residents and proprietors of the place wherein the estate is located, their qualifications as proprietors being established by means of the certificate presented with and attached to these proceedings and therefore combine the requisites demanded in Article 901 of the aforesaid Mortgage Law." (Fols. 264-5.)

No other proceeding was taken by Mateo Cariño except the proceedings in this case, which began by a petition to the Court of Land Registration to have his lands registered. The opinion of that Court in favor of

Cariño is found upon pp. 6-11 of the Record and contains a clear summary of the facts and of the law applicable to the situation. The decision was appealed from by the Insular Government and the United States (Rec., fol. 18) and was reversed by the Court of First Instance, which decision was affirmed by the Supreme Court of the Philippine Islands.

The Question.

There is but one question in the case. Has Mateo Cariño, the appellant, a legal and valid title to the land in question? If so, the decision of the Supreme Court of the Philippine Islands, confirming that of the Court of First Instance, must be reversed and the decision of the Court of Land Registration affirmed.

The Supreme Court of the Philippine Islands has held in effect that the possession of a definite piece of land under claim of title and in accord with local customary law for no matter how many generations confers no rights which are protected by the Treaty of Paris unless the possessor, whether aboriginal or Spaniard, had obtained, during the Spanish Régime, some paper title. If this decision be affirmed the whole Igorrote nation may be driven as "lawless squatters" from land which their fathers held before ever Spanish explorers set out in quest of the Indies. So unjust and startling a result cannot be reached without a revision to legal notions of property and social order incompatible with any stage of civilization above barbarism.

Assignment of Errors.

I.—The Court erred in holding that prescription did not run against public agricultural lands of the Kingdom of Spain in the Philippine Islands during Spanish sovereignty.

II.—The Court erred in holding that a grant of title

of public agricultural lands in the Philippine Islands could not be presumed from immemorial use and occupation.

III.—The Court erred in holding as a conclusion of law from the facts of record that title to the land involved in this proceeding had not vested in the plaintiff.

IV.—The Court erred in holding that Mateo Cariño, plaintiff herein, was not the owner in fee simple of the land involved in this proceeding, and was not entitled to its registration under the provisions of the Land Registration Act of the Philippine Islands.

V.—The Court erred in affirming the decision of the Trial Court ordering the dismissal of plaintiff's application. (Rec., fol. 308.)

SYNOPSIS OF PLAINTIFF IN ERROR'S CONTENTIONS.

1. The land belonged to Cariño under the Igorrote law. He had inherited it from his ancestors in accordance with the native customs and his title had never been questioned. The Spanish law explicitly recognized and scrupulously protected the Indian titles. Possession of land under such circumstances confers a property right *jure gentium* independently of any rule of prescription.

2. Claimant having actually possessed the land in question for more than thirty years had acquired, under the Spanish Civil Code, good prescriptive title. The provisions of this Code as to prescription apply to all lands in the Philippine Islands regardless of whether owned by the Government or not, just as they admittedly do in the Spanish Peninsula itself.

3. The provisions of the Civil Code applied to public agricultural lands as well as to other lands, and a detailed examination of the provisions relating to public

lands shows no intention on the part of the Government to except them from the purview of the Code enactments as to prescription, but on the contrary recognize the applicability of the common or general law.

4. The case of Valenton *v.* Murciano, 3 Phil. Rep., 537, to the effect that public agricultural lands were not within the purview of the Code provisions, is unsound and the doctrine should not be affirmed in this Court. Moreover, it is inconsistent with other decisions of that Court, and is distinguishable from the case at bar.

5. Cariño had a legal title under the Civil Code. Registration was a mere procedural formality and did not create property. In any event, he had a right of property under Spanish law which was protected by the Treaty of Paris. (Alfonso Buenaventura *v.* Commanding General, 6 Phil. Rep., 601.)

6. The Land Registration Court had jurisdiction of the subject matter and its decision was legal, just and in conformity with the provision in the Treaty of Paris providing for the protection of private property.

POINTS.

I.

The Court of Land Registration had jurisdiction in the premises.

The Court of First Instance held (Rec., fols. 293, 294) that the Land Court had no jurisdiction to entertain Cariño's petition for registration because Act No. 926 (The Public Land Act) had not been extended to Benguet. This ruling misconceives the whole proceeding. Cariño's application was not under Act No. 926 to perfect an incomplete title, and in effect obtain a government grant, or government confirmation of an imperfect

Spanish grant, or to exercise a surviving right of preemption based on Spanish law. The application was made under Act No. 496 (the Land Registration Act, by which the Land Court was created), and its object was not to perfect an inchoate title, but to record or register a title which was perfect and complete in itself, and in reference to which it was a convenience to have written evidence, which the Act was intended to render procurable.

The jurisdiction of the Land Court is thus defined by Act 496:

> Sec. 2. "A court is hereby established to be called "the 'Court of Land Registration,' which shall have "exclusive jurisdiction of all applications for the "registration under this Act of title to land or build- "ings or an interest therein within the Philippine "Islands, with power to hear and determine all ques- "tions arising upon such applications, and also have "jurisdiction over such other questions as may come "before it under this Act, subject to the rights of "appeal, as hereinafter provided."

Sec. 19 further provides:

> "Application for registration of title may be made by the following persons, namely:
>
> First. The person or persons claiming, singly or collectively, to own the legal estate in fee simple."

Now Cariño certainly claimed to own the "legal estate in fee simple"—the "*dominio*"—of the land in question; he made his application; he proved the facts on which his ownership was based; and under Sec. 2, *supra*, the Land Court had complete jurisdiction "to hear and determine all questions arising upon such application." It heard them, it determined them in the applicant's favor, and its jurisdiction to do so is beyond question, as well as the soundness and justice of its decision.

Act 926 shows the settled policy of the United States to recognize and protect all property rights in land, complete or inchoate, which existed at the time of the Treaty, but it is unnecessary for plaintiff to claim under it, and its extension or non-extension to Benguel is not a material factor in this case.

POINT II.

Cariño was the absolute owner of the land *jure gentium*. The land in question never formed part of the public domain.

In the Court below the question discussed was whether Cariño could have acquired title by prescription (unconfirmed by written grant) of land which belonged to the public domain.

This view seems to us to misconceive the real situation. It is erroneous in two basic assumptions, (1) that the land was public domain, (2) that the claimant or his predecessors were originally "squatters."

The real situation is essentially different. The land never at any time belonged to the Crown, but had since, and of necessity before, the Spanish conquest been in the possession of natives who had settled customs and laws of their own, not the least of which was the ownership of lands in severalty. Cariño and his predecessors held the land not as "squatters" on Crown lands but according to the laws and customs of their people (fols. 260-1).

If this be true historically, and there is, we believe, no ground for dispute on the point, there can be no reason for considering the questions of prescription and lost grant discussed so fully below.

Character and Customs of Igorrote Indians.

The Igorrote Indians constitute the majority of the

population of the Province of Benguet, being some 47,000 persons. The Philippine Commission, in its Report for 1902, Part I, p. 183) said of them:

> "The Igorrotes, clear-eyed, muscular and deep chested, honest and heathen, timid in manner but courageous in fact, herders and hunters, thinly populate Benguet, Lepanto, Bontoc and the mountains of the Ilocano and Cagayan countries. Except for their head-hunting forays, which persuasion could stop, they give no trouble. Physically they form the best military material in Luzon. The Bontoc constabulary is composed entirely of Igorrotes, and the attempt to give them the training and discipline necessary to soldiers is an interesting experiment."
>
> Phil. Com. Rep. 1902, Part I, p. 183.
> See also Census of Philippine Islands 1903, Vol. I, pp. 533 *et seq.*

The Commission in 1904 speaks of "the Igorrote soldiers as among the best and most reliable in the Corps" (constabulary). (Phil. Com. Rep. 1904, Part I, p. 574.) They are industrious and honest and construct wonderful irrigation and agricultural works. They are on the best of terms with the Americans and build and maintain the barracks for the constabulary forces and the necessary trails and roads. Their only "failing" in the language of the Commission seems to be "a fondness for the heads of strange tribes." This unfortunate peculiarity seems to have about vanished in these latter years.

The record here discloses that these people have made great progress in the arts of civilization and that the claimant here is himself a man of more than ordinary intelligence and thrift (Rec. fol. 270). Counsel for the Insular Government put forth a somewhat fanciful theory that the land here claimed was held by Cariño not as an individual but as a "bucknon" or chief who held land in a quasi feudal or seigniorial capacity. This suggestion

was based upon a letter from Governor Pack (of Benguet), who says that "Igorrote chieftains like Mateo simply by force of character maintained their dominant sway over large tracts of land" (fol. 222). This view is evidently not founded upon fact, at least as far as Cariño is concerned; whether it expresses some historic truth as to the origin of Igorrote property does not appear.

The learned Governor himself evidently changed his views, for we find him in a recent report expressly defining the word "bucknon" as "wealthy,—well to do." (Phil. Com. Rep. 1905, Part I, p. 176.)

The Trial Court disposes of the matter by acquiescing in the definition of "bucknon" given by Cariño himself as "A man that lives comfortably." It continues:

> "This title 'bucknon' is in no sense the holding of an office of chieftainship, save only as the man whose industry, thrift and superior intelligence, accompanied by honesty and integrity and resulting in the accumulation of wealth, the improvement of manners and customs of living, is invariably looked up to among all people, whether Christian or non-Christian, and in every grade of civilization above pure barbarism, as a leader among his fellows and an example among his fellows" (fol. 270).

That the Igorrotes are rapidly improving their lands, and manifesting a desire to educate their children is stated by the Court in eulogistic terms. Surely no grounds can be adduced for expropriating the claimant because he is a savage.

The Igorrote laws and customs regarding property rights are set forth in some detail in a Government publication, "The Bontoc Igorot," by Albert Ernest Jenks (Vol. I, Ethnological Survey Publication, Dept. of the Interior, Manila, P. I., 1905), from which we quote as follows:

"PROPERTY RIGHT.

The idea of property right among the Igorot is clear. The recognition of property right is universal, and is seldom disputed, notwithstanding the fact that the right of ownership rests simply in the memory of the people—the only property mark being the ear slit of the half-wild carabao. * * *

REAL PROPERTY OF INDIVIDUAL.

The individual owns dwelling houses, granaries, camote lands about the dwellings and in the mountains, millet and maize lands in the mountains, irrigated rice lands, and mountain lands with forests. In fact, the individual may own all forms of real property known to the people.

It is largely by the possession or non-possession of real property that a man is considered rich or poor. This fact is due to the more apparent and tangible form of real than personal property. The ten richest people in Bontoc, nine men and a woman, own, it is said, in round numbers, one hundred sementeras each. The average value of a sementera is 10 pesos for every cargo of palay it produces annually. A sementera producing 10 cargoes is rated a very good one, and yet there are those yielding 20, 25, 30, and even 40 cargoes. * * *

It is claimed that each household owns its dwelling and at least two sementeras and one granary, though a man with no more property than this is a poor man, and some one in his family must work much of the time for wages, because two average sementeras will not furnish all the rice needed by a family for food. * * *

Title to all buildings, building lands in the pueblo, and irrigated rice lands is recognized for at least two generations, though unoccupied during that time. They say the right to such unoccupied property would be recognized perpetually if there were heirs. At least it is true that there are now acres of unused lands, once palay sementeras, which have not been cultivated for two gen-

erations because water cannot be run to them, and the property right of the grandsons of the men who last cultivated them is recognized. * * *

Sale of Property.

Personal property commonly passes by transfer for value received from one party to another. Such a thing as transfer of real property from one Igorot to another for legal currency is unknown; the transfer is by barter. The transfer of personal property was considered in the preceding section on commerce.

Real property is seldom transferred for value received except at the death of the owner or a member of the family; at such times it is common, and occurs from the necessity of quantities of food for the burial feasts and the urgent need of blankets and other clothing for the interment.

Again, camote lands about the dwellings are disposed of to those who may want to build a dwelling. Dwellings are also disposed of if the original occupant is to vacate and some other person desires to possess the buildings.

Death may destroy one's personal property, such as hogs and carabaos, but almost never does an Igorot 'lose his property,' if it is real. Only a protracted family sickness or a series of deaths requiring the killing of great numbers of chickens, hogs, and carabaos, and the purchase of many things necessary for interment can lose to a person real property of any considerable value.

There is no formality to a 'sale' of property, nor are witnesses employed. It is common knowledge within the ato when a sale is on, and the old men shortly know of and talk about the transaction—thenceforth it is on record and will stand.

Inheritance and Bequests.

* * * * * * *

Since all the property of a husband and wife is individual, except that accumulated by the joint efforts of the two during union, the property of each is divided on

death. The survivor of a matrimonial union receives no share of the individual property of the deceased if there are kin. It goes first to the children or grandchildren. If there are none and a parent survives, it goes to the parent. If there are neither children, grandchildren nor parents it goes to brothers and sisters or their children. If there are none of these relatives the property goes to the uncles and aunts or cousins. This seems to be the extent of the kinship recognized by the Igorot. If there is no survivor the property passes to that friend who takes up the responsibilities of the funeral and accompanying ceremonies. The law of inheritance, then, is as follows: First, lineal descendants; second, ascendants; third, lateral descendants; fourth, surviving spouse; fifth, self-appointed executor who was a personal friend of the deceased.

Primogeniture is recognized, and the oldest living child, whether male or female, inherits slightly more than any of the others. For instance, if there were three or four or five sementeras per child, the eldest would receive one more than the others.

This law of primogeniture holds at all times, but if there are three boys and one girl the girl is given about the same advantage over the others, it is said, as though she were the eldest. If there are three girls and only one boy, no consideration is taken of sex. When there are only two children the eldest receives the largest or best sementera, but he must also take the smallest or poorest one.

It is said that division of the property of the deceased occurs during the days of the funeral ceremonies. This was done on the third day of the ceremonies at the funeral of old Som-kad, mentioned in the section on 'Death and Burial.' The laws are rigid, and all that is necessary to be done is for the lawful inheritors to decide which particular property becomes the possession of each. This is neither so difficult nor so conducive of friction as might seem, since the property is very undiversified."

Recognition of Aboriginal Property Rights by American Law.

One cannot refrain from surprise at the position of the Insular Government that Cariño had no property rights but was a mere "squatter." Not only did Spain never take such a view, but the American Courts have uniformly held the individual possession of the American Indian to his land as sacred. While the United States Government has claimed a general right of paramount control over the Indian tribes as such, the doctrine that the right of the individual to the land which was his by tribal law could be taken away at will and that he was a mere lawless "squatter" has never been an official American doctrine. Nor has it been sanctioned, by practice at least, in our day. Save in this and perhaps a few other isolated cases there is no evidence that the Philippine authorities desire to revert to the moral standards of Cortez and Pizarro in dealing with the aborigines in the new possessions. A wholly different view of Indian titles finds expression in the most recent utterances of this Court. Speaking of Indian title Mr. Justice McKenna writing for the Court, says:

> "It is certainly more than a mere right of occupation. * * . The title is held by the United States, it is true, but it is held in trust for individuals and their heirs to whom the same were allotted."
>
> United States *v.* Paine Lumber Co., 206 U. S., 467.

And again Mr. Justice White in reviewing the cases involving the relations of the Indians to Government, says:

> "The Indian right of occupancy of tribal lands, whether declared in a treaty or otherwise created has been stated to be sacred, or as sometimes expressed as sacred as the fee of the same lands in the United States.'
>
> Lone Wolf *v.* Hitchcock, 187 U. S., 564.

"The Indian title is property, and alienable, unless the treaty has prohibited its sale."

Doe [redacted] *v.* Wilson, 23 How., 463.

Recognition and Protection of Aboriginal Titles by Spanish Law.

The law of Spain recognized and protected the rights of the native occupants of its Indian possessions even more fully and scrupulously than our own Government has done in the case of its Indian wards. Whatever may have been the brutality of the fierce "Conquistadores," and the abuses of some of their successors, the Home Government, at least, promulgated a Code for the treatment of the Indians far surpassing in broad humanity any legislation of that age. This was doubtless due in large measure to the splendid efforts of that good and great man, Las Casas, the most devoted friend the Indian has known. (See Arthur Helps, "Spanish Conquest in America.")

The "Laws of the Indies," that famous compilation of Spanish legislation for the government and administration of its provinces beyond seas, show a continuous, consistent and conscientious purpose to protect the native inhabitants in their persons, liberties and possessions, to secure their property rights against Spanish greed and native improvidence, and in general to put them in the position not of conquered subjects, but of favored wards. We shall quote from these laws at some length, even at the risk of appearing to expand this brief somewhat unduly, because they establish so conclusively, both by their general tenor and by their specific provisions, that Spain never in any way claimed the lands of the Indians as a part of the public domain, but recognized and confirmed all property rights in lands resting upon Indian customs and Indian possession, and protected them against private lawlessness, official misconduct, and even clerical acquisitiveness.

Book Sixth of this compilation is devoted entirely to

the subject of the native inhabitants, and the first law of its first title will illustrate the general spirit of the legislation. It is as follows:

Book 6, Title 1, Law 1.

Philip II, at Madrid, December 24, 1580. Charles II and the Queen Regent.

THAT THE INDIANS BE FAVORED AND PROTECTED BY THE ECCLESIASTICAL AND SECULAR AUTHORITIES.

"Having to treat in this book the subject of the Indians, their liberty, growth and protection, as is set forth in the titles of which it is composed; it is our will to charge upon the viceroys, Presidents and Audiencias, the duty of looking after them and giving the proper commands, in order that they may be protected, favored and relieved, because we desire that the injuries which they suffer be remedied, and that they may live without molestation or annoyance; taking this charge as established once for all, and having always before them the laws of this compilation which favor and protect them, and defend them from all injury whatsoever, that they observe them and cause them to be observed with great care, punishing those who violate them with special and rigorous severity; and we ask and charge upon the ecclesiastical authorities that for their part, they act as true spiritual fathers of this new Christendom, and preserve them all in their privileges and prerogatives, and keep them in their protection."

(For Spanish text see Appendix, p. 81.)

That these laws applied specifically to the Philippine Islands is manifest from the following:

Book 6, Title 1, Law 15.

Philip II, at Madrid, November 7, 1574.

THAT THE INDIANS IN THE PHILIPPINE ISLANDS BE NOT FORCIBLY REMOVED FROM ONE ISLAND TO ANOTHER.

"We command that in the Philippine Islands the Indians be not removed from one to another for settlement by force and against their will, except in some very necessary case, and that they be paid for their work and services, and be well treated and receive no injury."

(See Appendix, p. 81.)

This recognized the well known attachment of the Philippine Indians to the soil on which they were born and bred.

Their ownership of lands, both severally and by communities, is expressly recognized in the following:

Book 6, Title 1, Law 23.

Philip III, Ordinance 10 of 1609, concerning personal services.

THAT A TIME BE APPOINTED TO THE INDIANS FOR THEIR OWN LANDS AND GRANARIES, AND THAT IT BE MADE SURE THAT THEY HAVE THEM.

"It is right that time should be allowed to the Indians to work their own individual lands, and those of the community, and that the viceroys and governors should appoint such time as is necessary, so that they may resort to their granaries; and see to it that they have them, so that they may be the better relieved, and the land better cultivated. We so command."

(See Appendix, p. 82.)

This also shows that the Spanish Government realized that some Indians, both individually and in communities, were not adequately provided with lands of their own, and that this lack should be supplied by the proper officials.

Due precaution was also taken that the Indians should not suffer from their own improvidence, or be imposed upon by the unscrupulous:

Book 6, Title 1, Law 27.

Philip II, at Aranjuez, May 24 and July 23, 1571. At San Lorenzo May 6, and at Madrid May 18, 1572.

THAT THE INDIANS MAY SELL THEIR PROPERTIES WITH JUDICIAL PERMISSION.

"When the Indians sell their property, real and personal, according to what is permitted to them, it shall be proclaimed by public outcry and sold at public auction, in the presence of a judicial officer—the real estate for a period of thirty days, and personal property for nine days; and whatever shall be sold in any other way shall be of no value or effect; and if it shall seem proper to the judge for sufficient reason to shorten the time, he can do so in regard to personal property. And since the property which the Indians sell is ordinarily of small value, and if in all of such sales it was necessary to follow these formalities, it would involve as much expense as the principal amounts to, we order that this law be observed and enforced, in regard to whatever exceeds thirty pesos of usual gold, and not in smaller amounts; for in this case it will be sufficient for the Indian vendor to appear before any ordinary judge, and ask leave to make the sale; and such judge, ascertaining by some investigation that what he wishes to sell is his own, and that its alienation is not injurious to him, shall give him permission, placing his authorization upon the writing which the purchaser shall execute, being of full age and having capacity to that end."

(See Appendix, p. 82.)

This shows that not merely was Indian ownership of real and personal property expressly recognized, but specially protected by requirements similar to those applicable to minors and other persons under disability. They had a right to sell their properties, but care was taken that they should not do themselves injury by the exercise of such right.

Their right of testamentary disposition was also recognized and safeguarded:

Book 6, Title 1, Law 32.

Philip II, at El Pardo, April 16, 1580.

THAT THE INDIANS HAVE FREEDOM IN THEIR DISPOSITIONS.

"If any Indians who are rich or have property in any form are ill, and attempt to execute their wills, it happens that the priests and teachers, clerics and religious, induce and command them to leave the whole or the greater part of their properties, either to them or the church, even although they may have forced heirs—an abuse which is very prejudicial and unlawful. We command the Viceroys, Presidents, and Audiencias that they see to it and give the proper orders to the end that the Indians receive no injury, and have complete liberty in their dispositions, and permit no violence against them; and we command the ecclesiastical prelates not to suffer it, but to observe Law 9, Title 13, Book 1."

(See Appendix, p. 83.)

It was evidently desired that the Indians should be brought into regular settlements, in order, doubtless, the better to control them; but even when this was done, their property rights in the lands from which they moved were to be scrupulously respected:

Book 6, Title 3, Law 9.

Philip II, at Toledo, February 19, 1580.

THAT THE INDIANS BROUGHT INTO SETTLEMENTS BE NOT DEPRIVED OF THE LANDS WHICH THEY HELD PREVIOUSLY.

"The Indians will be brought into settlements with greater willingness and alacrity, if they are not deprived of the lands and granaries which they had in the localities which they may leave. We order that

in this no change be made, and that they keep them, in the same manner that they held them before, in order that they may cultivate them and endeavor to improve them."

(See Appendix, p. 83.)

Even in the case of the death of Indian land-owners without any known heirs or successors, the government exercised only a limited right of escheat, and the greater part of such vacant inheritances devolved upon the Indian communities. The officers especially charged with the care and supervision of the Indians ("Encomenderos") were expressly barred from succeeding to such lands, thus removing an obvious source of temptation:

Book 6, Title 1, Law 30.

The Emperor Charles and the Prince Regent at Madrid, May 14, 1546.

THAT THE COMMANDANTS ("ENCOMENDEROS") SHALL NOT SUCCEED TO LANDS LEFT VACANT BY THE DEATH OF INDIANS.

"The commandants cannot succeed to the lands and inheritances which have been left vacant on account of the death of Indians within their commanderies ('encomiendas') without heirs or successors, and there shall succeed to them the villages of which they were inhabitants, up to the amount that may be fairly necessary for the payment and satisfaction of the tribute which may be imposed upon them, and something more; and the rest that is over shall be applied to our royal patrimony."

(See Appendix, p. 83.)

Special provision was also made against abuses by private travelers among the Indians:

Book 6, Title 3, Law 26.

The Emperor Charles at Toledo, December 4, 1528.

THAT TRAVELERS TAKE NOTHING FROM THE INDIANS BY FORCE.

"We order that in Indian villages, settlements and farms, the travelers shall not take from the Indians against their will provisions or other things, and if anyone sells them, that the reasonable value be paid, and if anyone shall take anything in any other way, the judges shall compel him to make satisfaction to the Indians and pay a penalty of twice or four times the amount, one-half to the public treasury, and the balance to be divided between the judge and the informer."

(See Appendix, p. 84.)

In the Second Book of the Compilation, which deals with the legal and judicial system of the colonies, are also found special provisions for the protection of the Indians. A particularly important one is as follows:

Book 2, Title 1, Law 4.

The Emperor Charles and the Princess Regent Joanna, at Valladolid, August 6, 1555.

THAT THERE BE OBSERVED THE LAWS WHICH THE INDIANS ANCIENTLY HAD FOR THEIR GOVERNMENT AND THOSE WHICH HAVE BEEN NEWLY MADE.

"We order and command that the laws and good customs which the Indians anciently had for their good government and order, and their usages and customs which they have observed and kept since they became Christians, and which are not incompatible with our holy religion, or with the laws of this book, as well as those which they have recently made and declared, be kept and executed, and, it being necessary, by these presents we approve and confirm them, together with what we are able to add thereto that is useful to us and appears to us accordant with the service of God our Lord, and our own, and the preservation and Christian government of the natives of these provinces, without prejudice to what has already been done, and their good and just customs and their own statutes."

(See Appendix, p. 74.)

This is an express adoption of the Indian laws and customs for the ownership and transmission of their own property; in other words, where actual peaceable continued possession of land constituted ownership, as it evidently always has, and still does, among the Igorrote Indians, such ownership was recognized by the Spanish government.

It was also provided that the protection, intended to be afforded to the Indians by the laws on their behalf, should not be rendered futile by dilatory legal proceedings:

Book 2, Title 1, Law 5.

The Emperor Charles at Toledo, December 4, 1528, Chapter 15, and August 24, 1529.

THAT THE LAWS IN FAVOR OF THE INDIANS BE ENFORCED, NOTWITHSTANDING APPEAL.

"Desiring the preservation and growth of our Indies, and the conversion of the natives to our Holy Catholic faith, and to secure their good treatment, we have directed that there be collected in this compilation everything that has been ordered and decreed in favor of the Indians and that there be added that which has seemed necessary and proper. And since our will is, that this, and particularly the laws which have been made in favor of the Indians, be inviolably observed, we command the Viceroys, Audiencias, Governors and other judges and tribunals, that they observe and obey them, and cause them to be observed, obeyed and enforced in all respects and in every particular, notwithstanding appeal or petition, under the penalties contained in them, and further in our discretion, and on pain of forfeiture of all property to our treasury and exchequer, and suspension from office."

(See Appendix, p. 75.)

Book Fourth of the Compilation treats of discoveries, colonization and land law generally. A most significant provision therein is the following:

Book 4, Title 1, Law 6.

Ordinance 29, concerning colonies. Philip IV at Madrid, June 11, 1621, Charles II and the Queen Regent.

THAT IN THE PATENTS THE WORD CONQUEST BE AVOIDED, AND THOSE OF PACIFICATION AND COLONIZATION USED.

"For suitable causes and considerations, it is proper that in all the patents which are made out for new discoveries, the word 'conquest' be avoided, and in its place the words 'pacification' and 'colonization' used. Since, desiring to act with all peace and charity, it is our will, that this word, by being interpreted contrary to our intention, should not give opportunity or excuse to the patentee to do violence or injury to the Indians."

(See Appendix, p. 75.)

This is an express disclaimer of any "title by conquest" to the new Spanish possessions, for the very purpose of protecting the Indians against oppression and spoliation under color of such claim. In other words, the Spaniards regarded themselves not as conquerors, but as settlers or pioneers, not ousting the aboriginal inhabitants, but taking their place among them in the amply sufficient vacant territory. As will be seen by other provisions, this distinction between Spanish Crown lands, which the government could distribute to the Spaniards, and original Indian lands, which the government never claimed nor attempted to distribute, runs through the whole legislation on the subject.

The explorers were expressly forbidden to take part in any Indian factional disputes, so as to enrich themselves by "fishing in troubled waters," or to take any property from the Indians, except by fair exchange or free gift:

Book 4, Title 1, Law 10.

Philip II, Ordinance 20, concerning colonies.

THAT THE DISCOVERERS SHOULD NOT INVOLVE THEMSELVES IN WARS OR FACTIONS AMONG THE INDIANS, OR DO THEM ANY DAMAGE, OR TAKE ANYTHING FROM THEM.

"The discoverers by land or sea shall not involve themselves in any war between certain Indians and others, nor foment nor assist in any controversies, for any cause or reason whatsoever; they shall do them no harm nor injury, nor take their property, except by way of barter, or gifts made of their own free will."

(See Appendix, p. 76.)

Another and broader provision to the same effect is a very Magna Charta of Indian rights, and compares favorably with that famous bulwark of private security, or with our own constitutional provisions based thereon:

Book 4, Title 1, Law 8.

The Emperor Charles, Ordinance 8th, of 1523.

THAT IT IS NOT PERMITTED TO MAKE WAR ON THE INDIANS, OR DO THEM HARM OR INJURY, OR TAKE ANYTHING FROM THEM WITHOUT PAYMENT.

"We order and command the Governors, chiefs and new discoverers, not to suffer or permit anyone to make war against the Indians, except in the cases mentioned in the Title concerning war, or to do them any other wrong or injury whatever, or to take from them anything of their property, fortune, cattle or crops, without payment in advance, and full satisfaction given, provided that purchases and exchanges shall be of their own free will and accord, and that punishment be inflicted upon those who maltreat or injure them, in order that they may easily come to a knowledge of our Holy Catholic Faith."

(See Appendix, p. 76.)

This is superior even to our own "due process of law" requirements, in that payment for property taken must be made *in advance.*

The provisions regulating the allotment and preemption of lands all show the same solicitude for Indian rights.

In any allotments made, the Indian lands are to be undisturbed:

Book 4, Title 12, Law 5.

The Emperor Charles at Barcelona, April 4, 1532. Philip II, Ordinance of councils, 1563, and Ordinance 58, at Toledo, May 25, 1596.

THAT ALLOTMENTS OF LANDS BE MADE AFTER CONSULTATION WITH COUNCILS, AND THAT THE COUNCILLORS BE PREFERRED.

"When there is occasion to allot lands, waters, springs and pastures among those who colonize them, the Viceroys and Governors who hold our license, shall make the allotment after consultation with the councils of cities and villages, taking care that the councillors be preferred, unless they have already received equivalent lands and holdings; and there shall be left to the Indians their lands, inheritances and pastures, so that they shall not lack what is necessary, and shall have all possible ease and comfort, for the support of their families."

(See Appendix, p. 77.)

Book 4, Title 12, Law 7.

Philip II, at El Pardo, April 6, 1588.

THAT LANDS BE ALLOTTED WITHOUT FAVOR TO INDIVIDUALS OR INJURY TO THE INDIANS.

"We order that allotments of lands, both in new colonies and in places and limits already colonized, be made with all fairness, without partiality, favor to individuals, or injury to the Indians."

Where lands actually belonging to the Indians had been wrongfully granted, they were to be restored:

Book 4, Title 12, Law 9.

The same at Madrid, June 1, 1594.

THAT LANDS BE NOT GRANTED TO THE INJURY OF THE INDIANS, AND THAT THOSE ALREADY GRANTED BE RETURNED TO THEIR OWNERS.

"We order that grants of farms and lands to Spaniards be without injury to the Indians, and that those which have been granted to their loss and injury, be returned to the lawful owners."

(See Appendix, p. 77.)

The general land law, which was referred to by the Court in the Valenton case, is explicitly clear in its recognition of Indian rights. It is as follows:

Book 4, Title 12, Law 14.

Philip II, November 20, 1578. .March, 8, 1589, and at El Pardo November 1, 1591.

THAT THE POSSESSORS OF LANDS, FARMS, PLANTATIONS AND MANORS WITH LAWFUL TITLES, BE MAINTAINED IN SUCH POSSESSION, AND THAT ALL OTHERS BE RESTORED TO THE KING.

"Whereas we have wholly succeeded to the lordship of the Indies; and the farms, messuages, and lands which have not been granted by their Majesties the Kings our predecessors, or by us, or in our name, belong to our patrimony and royal crown; and it is meet that all the land which is possessed without just and true titles be restored to us, in manner and form as it belongs to us; we order that, reserving in the first place whatever may appear necessary to us, or to the Viceroys, Audiencias and Governors for public squares, ways, commons, pastures and farms, in the places and villages which have been

colonized, as well for what is suitable for their present state, as for the future, and the growth which they may make, and allotting to the Indians what they fairly need to cultivate and make their plantations and gardens, *confirming them in what they have now,* and giving them further what is necessary, all the rest of the land may be and remain free and unencumbered to grant freely and dispose of at our will and of our own bounty. Therefore, we order and command the Viceroys and Presidents of pretorian Courts, that when it seems proper to them, they appoint a suitable term within which the possessors shall exhibit to them and the officers of their Councils whom they may appoint, their grants of lands, farms, plantations and manors, and confirming those who hold with good grants and assurances or by *just prescription,* that the rest be returned and restored to us to dispose of at our will."

(See Appendix, p. 78.)

Since this law expressly confirms the Indians in their then present possessions, and recognizes ownership based on "just prescription," equally with that based on royal grant, there cannot be read into it any intention to force the Indians to register their lands under pain of forfeiture. The Indians held under their own laws and customs, and obviously could not have any grants or *"titulos"* to exhibit to the royal commissioners, and this requirement therefore could not possibly apply to them. Doubtless, they might, if they wished, put upon record evidence of their immemorial possession, and thus obtain a further assurance of their ownership, but the law did not expressly require this, and it is evident from the record of this very case that such a course was not followed in practice, for the Spanish Governor Martinez told the present claimant "that it was not necessary for us to have any document, because the lands belonged to us, and no one could usurp them or take them from us." (Record, Folio 111.)

That the very formalities attendant upon government grants were intended principally for the protection of the Indians, appears from the following:

Book 4, Title 12, Law 16.

The Emperor Charles, and the Empress Regent at Ocaña, February 27, 1531. Philip III at El Pardo, December 14, 1615, and at Madrid, June 17, 1617.

THAT LANDS BE GRANTED AND SOLD PURSUANT TO THE PROVISIONS OF THIS LAW, AND THE PARTIES IN INTEREST OBTAIN CONFIRMATION.

"To avoid the inconvenience and damage which follow from granting or selling manors, farm holdings and other areas of land, to the Spaniards, to the damage of the Indians, based upon tainted proceedings of witnesses: We order and command, that when lands are granted or sold, it shall be done upon notice to the Fiscals of our royal Audiencias of the district, who shall be under an obligation to investigate and examine with all diligence the character and testimony of the witnesses: And the Presidents and Audiencias, if they shall so determine, shall grant or sell them upon consultation with the Land Office, where it must be determined if they belong to us, proclaiming them by public outcry, and selling them at public auction, as in the case of our other property, and always looking to the g[illegible] of the Indians; and in case they are to be granted or sold by the viceroys, it is our will that none of the said officials shall intervene; and the grant which shall be given to the parties in interest is to obtain our confirmation within the ordinary period, which is observed in the grants of commanderies of Indians."

Not merely were Indian lands not subject to royal grant, but lands which had been wrongfully acquired by individual Spaniards from Indians were not subject to preemption, and a duty was imposed upon the public

officers to institute the necessary proceedings to procure their restoration to their lawful owners:

Book 4, Title 12, Law 17.

Philip IV at Saragossa, June 30, 1646.

THAT NO ONE BE ADMITTED TO PREEMPTION OF LANDS WHICH HAD BELONGED TO THE INDIANS, OR BEEN HELD WITH FAULTY TITLE, AND THAT THE FISCALS AND PROTECTORS MAINTAIN THE PROPER PROCEEDING.

"The more to favor and protect the Indians, and that they may receive no injury, we command that no preemption be made of lands which the Spaniards had acquired from Indians contrary to our royal decrees and ordinances, or which they possess with faulty title; because as to these, it is our will that the Fiscal-Protectors, or those of the Audiencias, if there are no Fiscal-Protectors, shall take the necessary proceeding, and maintain the right which belongs to them by such decrees and ordinances, to demand the annulment of such contracts. And we charge the Viceroys, Presidents and Audiencias to give them every assistance for their full compliance herewith."

(See Appendix, p. 79.)

Not only was original Indian ownership respected, but Indian communities were allowed to acquire additional lands by preemption, and were given preference therein:

Book 4, Title 12, Law 19.

The same at the same place, June 30, 1646.

THAT NO ONE BE ADMITTED TO PREEMPTION WHO HAS NOT POSSESSED THE LANDS FOR TEN YEARS, AND THAT THE INDIANS BE PREFERRED.

"No one shall be admitted to preemption of lands, who has not possessed them for ten years, even if he claims that he is in actual possession thereof, since

this pretext alone is not sufficient, and the communities of Indians shall be admitted to preemption in preference to other private individuals, giving them every advantage."

(See Appendix, p. 80.)

Individual and community ownership were both expressly recognized and protected, and all lands, which the Indians had improved or cultivated in any way, were carefully reserved to them:

Book 4, Title 12, Law 18.

The same at Madrid, March 16, 1642, Saragossa, June 30, 1646.

THAT THEIR LANDS BE LEFT TO THE INDIANS.

"We order that the sale, benefit and preemption of lands be made with such care that there be amply left to the Indians those which belonged to them, whether individually, or in communities, and that the waters and springs, and the lands in which they have made works for irrigation, or any other improvement, and those which they have cultivated by their personal industry, be reserved in the first place, and that they cannot in any case sell or alienate them; and the judges who shall be sent shall specify the Indians who shall be found upon the lands, and the lands which shall be left to each one of the elders, chiefs, headmen, caciques, governors, absentees and communities."

(See Appendix, p. 80.)

The effect of all this legislation is briefly this: Spain never claimed title to the original Indian holdings in her colonial possessions, by virtue of conquest or otherwise. She recognized ownership based upon native laws and customs. She protected this ownership by the most stringent regulations. She may have allowed native titles to be registered, but she did not require it, and wherever the laws made a distinction between Indian and

Spanish owners, such distinction was in favor of the Indians, and for their greater protection.

In the case at bar, it is evident that Cariño and his predecessors owned the land in suit by Indian law and custom; that such ownership was recognized and protected by Spain, and at the time of the Cession constituted property in the fullest and most sacred sense; this property right was protected both by general international law, and by the Treaty of Paris, which expressly guaranteed all rights attaching, not merely to recorded grants and titles, but to "the peaceful possession of property of all kinds."

POINT III.

Prescription ran against the State under Spanish law. Assuming merely *arguendo* that the land occupied by Carino was public land, even so, he had acquired a title thereto.

The Civil Code in force in the Philippine Islands at the date of the cession provided as follows in regard to prescription: (Translation of the Civil Code in force in Cuba, Porto Rico and the Philippines, 1893, War Dept. 1899, Govt. Ptg. Office:)

> Art. 1930. Ownership and other property rights are acquired by prescription in the manner and under the conditions specified by law.
>
> Rights and actions, of any kind whatsoever, also are extinguished by prescription in the same manner.
>
> Art. 1931. Persons qualified to acquire property or rights by other legal means may also acquire the same by prescription.

Art. 1932. Rights and actions shall extinguish by prescription *to the prejudice of all kinds of persons*, including judicial persons, in the terms prescribed by law.

* * *

Art. 1936. All things which are the object of commerce are capable of prescription.

* * *

Art. 1959. Ownership and other property rights in real property shall also prescribe by uninterrupted possession of the same for thirty years without the necessity of title nor good faith and without distinction between present and absent persons, with the exception mentioned in Article 539."

This Code was admittedly in effect in the Philippine Islands. It was expressly extended to the Islands of Cuba, Porto Rico and the Philippines, by a Royal Decree of Feby. 31, 1889 (2 Alcubilla, 5th Ed., p. 692).

Prior to that time the law as to prescription in the Philippine Islands was precisely similar and was found in the Third Partida, Title XXIX, Laws 7, 18, 21.

Law 7 enumerated certain classes of municipal property in actual public use, such as streets, squares and the like, which were not subject to prescription and provided that everything else could be acquired by 40 years' possession.

Law 18 provided for ordinary prescription of 10 and 20 years, substantially the same as Art. 1957 of the Civil Code.

Law 21 provided for extraordinary prescription, by 30 years' possession without good faith, the same as Art. 1959 of the Civil Code. (See Appendix, pp. 86, 87, 88.)

Is there anything in the nature of real property held by the State which distinguishes it, under the Code, from real property held by individuals? Articles 339 and 340 provide that property belonging to the State other than that used for roads, canals, ports, bridges, walls, fortresses, etc., is *private property*. This private property

of the State is known as patrimonial property. Art. 342 provides:

> "Property of the Royal patrimony is governed by its special law, *and in what is not provided for therein by the general provisions established by this code regarding private property.*"

Art. 345 places the patrimonial property of the State upon the same basis as private property of individuals.

Counsel for the appellee cannot and do not in fact claim that these Code provisions are not applicable to the Philippine Islands (Rosa *v.* Natalio, *et al.*, 7 Phil. Rep., 556). Their claim is that public agricultural lands are excluded from their operation by reason of various public land laws hereinafter mentioned. Nor can it now be maintained that prescription does not apply to lands owned by the Government, since this very question has been passed upon by the Supreme Court of Spain. The Crown of Spain, unlike the English feudal Monarchy, was not immune against the running of time and the maxim *nullum tempus occurrit regi* was never part of the Spanish law.

The question arose in the case of Francisco Aragon Gonzalez, decided by the Supreme Court of Spain, April 16, 1881. The Government sued Gonzalez for the recovery of certain lands which the State had never granted and to which Gonzalez had no other title than that by prescription.

The Court held:

> "That Law 7, Tit. 29, Partida 3, is not applicable and could not have been infringed by the judgment because among the things which said law declares imprescriptible are not included the properties of the State, which, as a legal personality, is subject to the prescriptions of the common law; and no exceptions or privileges can be accorded which the law does not concede." *Jurisprudencia Civil,* vol. 46, p. 9. Madrid, 1882. (Rec., fol. 274.)

This conclusive authority as to the Spanish law was apparently overlooked by the Supreme Court of the Philippine Islands in Valenton *v.* Murciano, because they query whether the general Statute of Limitations would run against the State (p. 540). An examination of the Spanish jurisprudence upon this subject shows that query to be unnecessary, the question having been already authoritatively answered.

See also Sanchez Roman, Vol. 3, pp. 277 *et seq.*, and Alcubilla 1906, p. 602.

Not only has this question been thus set at rest by the highest judicial authority of Spain, but a further examination of its ancient laws establishes the existence of the same rule from the earliest times.

The Sixth Partida, Title 19, Law 10, by granting to the King the same extension of time allowed to minors to demand restitution of property adversely held, shows that prescription was recognized as running against the one the same as against the others. (See Appendix, p. 89.)

The Novisima Recopilacion, Book XI, Title 8, Law 4, is so peculiarly apposite that we quote it in full:

> "*Time necessary to prescribe the dominion of towns, and their civil and criminal jurisdiction, except the Supreme jurisdiction and the Taxes and Tribute belonging to the King.*
>
> "Whereas certain persons in our realms hold and possess certain cities, villages and places, and civil and criminal jurisdiction, without holding therefor our grant, or that of the Kings, our predecessors, and it has been doubted whether such can be acquired against us and our Crown by any lapse of time; we order and command, that immemorial possession, proved pursuant and according to and in conformity with the particulars which the Law of Toro requires, being Law 1, Title 17, Book X, is sufficient to acquire against us and our successors any cities, villages and places whatsoever, and civil and criminal jurisdictions, and whatsoever thing and part thereof, with

the things belonging and appertaining to the dominion and jurisdiction: provided that the said time of the said prescription be not interrupted or broken by us or our representative or others in our name, in fact or in law; but as to the Supreme Civil or Criminal jurisdiction, which Kings have for Royal Majesty and power, which is that of acting and completing where other Lords and Judges fail, we declare that this cannot be acquired or prescribed by said period of time, or by any other; and in the same manner, what the laws say to the effect that the property of the realm cannot be acquired by lapse of time, is understood to mean the taxes and tribute due to us."

(See Appendix, p. 89.)

In like manner the Ordenanzas Reales de Castilla, Book III, Title 13, L. VI, provided "that civil jurisdiction can be acquired against us by lapse of forty years and no less."

The whole doctrine goes back to the foundation of all continental jurisprudence, the Roman Law, and is found firmly entrenched in the great Justinian Code.

We quote as follows:

Book 7, Title 37, C. 1.

The Emperor Constantine to Orphitus:

"It is known that no suit is to be begun by the Fisc concerning vacant property after forty years continuous lapse of time. It is further provided that those who enjoy our bounty are not to be disturbed by any anxiety; nor is any litigation to be begun against them by our Fisc, by whatever title or in whatever manner they may have possessed such property as aforesaid."

Book 7, Title 39, C. 4.

The Emperor Anastasius to Matronianus, pretorian perfect.

"* * * And no right of action, public or pri-

vate, in whatsoever cause, or in favor of whatsoever person, which has been extinguished by non claim, for the aforesaid period of forty years, shall be effective. But everyone owns against any claim whatsoever that which he has possessed without any adverse claim, or judicial proceeding, for the time aforesaid."

Book 7, Title 39, C. 6.

"* * * We command accordingly that those who have possessed anything whatever for a continuous period of forty years without any adverse legal claim, by any form of possession whatever, and even without ownership, are in no wise to be ousted" (saving only the right of the State to taxes).

(See Appendix, pp. 90, 91.)

The only exception was in the case of fraudulent purchasers from Imperial tenants (Book 7, Title 38, C. 2), a provision analogous to that of the Second Partida, Title 7, Law 1. (See App., p. 90 and p. 84.)

Thus we see that ancient Roman legislation and modern Spanish jurisprudence accord in placing the State, in regard to its ordinary property rights, on the same footing as any other legal entity.

So far from there being any doubt whether prescription ran against the Crown in the Philippine Islands under the general law, it would have required special legislation, wholly inconsistent with the general law, to produce any different result. No such law can be cited, for none exists.

Even in English law we find Bracton, whose work was substantially contemporary with the compilation of the Partidas, recognizing certain Crown lands as prescriptible, in the following explicit terms:

"There are also things which belong to the Crown which are not so sacred but that they may be alienated, such as are farms, lands and tenements and the

like, by which the Crown of the King is supported, and in regard to which time runs against the King, just as against any private person whatever." (Bracton, Lib. 2, c. 5, §7, as cited by Story, *J.*, in U. S. *v.* Hoar, 2 Mason, 311. Fed. Cas. No. 15,373.)

The maxim *"Nullum tempus occurrit regi"* appears to have been first applied, and in fact confined, to *franchises,* and only gradually extended to ordinary Crown property, through the efforts of over-zealous Crown lawyers. (See Pollock & Maitland, History of English Law, Vol. I, p. 572, Vol. II, p. 144.) This was in turn corrected by the Statute of 9 Geo. III, 3, c. 16, which established the period of 60 years as sufficient to bar even the Crown's rights in landed property. Thus even this famous maxim was merely a temporary aberration of English law, from which the Spanish law escaped.

POINT IV.

The public land laws in no way repeal, modify or nullify the common or general law.

The remaining inquiry is whether the general Code provisions were limited in their application by anything found in the special laws regulating the disposition of the public lands. If not the General or Common law must prevail.

In the Valenton case, as well as in the opinions of the Courts of First Instance and the Supreme Court in this case, will be found a somewhat detailed review of these special laws. The Supreme Court of the Philippine Islands has not, we respectfully submit, stated the question exactly in saying:

"Did these special laws recognize any right of

prescription against the State as to these lands; and if so, to what extent was it recognized?" Valenton *v.* Murciano, 3 Phil. Rep., at p. 540.

We take it that the question is not whether they specifically recognize any right of prescription, but whether such general right was inapplicable to public lands.

The Supreme Court in the Valenton case reviews the Laws of the Indies and certain special decrees, providing for the disposition of public lands. These laws did not refer to the Indian lands, and can have no application to the holdings of the Cariño family. Waiving this *arguendo,* we find nothing in those decrees modifying the Code enactments. On the contrary these special land laws were for the purpose of facilitating the acquisition of homesteads, ten years usually being a sufficient time to entitle one to a regular grant from the Spanish Government. The Court of Land Registration puts it concisely in referring to one of the decrees mentioned:

"What the decree in question did (and in this it was similar to others), was to hold out special inducements to occupants of public lands that they might be persuaded to secure a record title for their holdings. It was a special modification of the prescriptive period in favor of the occupants. As an added spur it was provided that as to all those coming within the conditions who neglected to take out title, the State would reassert its right and sell the property. This was not a repeal of the law permitting title to be acquired by prescription, as is clearly evidenced by the last paragraph of Article 21, Decree of February 13, 1894, already quoted. It meant simply that as to such lands, exempt for a time from the usual limitations, the State would again be free to exercise its rights.

As an illustration, suppose the Cariño family, on

the date in question (June, 1900), had been in possession of the lands for twenty-six years, without cultivation. Notwithstanding that this occupation would not have given them title by prescription, they could secure composition of title under paragraph 6, Article 6 of the decree. Failing to do this within the time and in the manner provided, the property became once more subject to sale or other disposition by the Government" (Rec., fols. 14-15).

We insist that the purpose sought to be accomplished by such decrees was not the *creation* of titles, but to induce Spanish settlers to secure written evidences of title to lands the ownership of which had already obtained by prescription. The policy of Spain was to secure the settlement and cultivation of unoccupied lands in her colonies, thus increasing her trade and commerce, and as a consequence, her revenues: The settlement and cultivation of the land, however, only partially accomplished her purpose. It was her wish, as it is the wish of Governments everywhere, to have land-holdings registered. In this way only could real estate credit be secured, and that material development be achieved which rests upon the basis of unquestioned ownership of land. The main purpose of such decrees iterated and reiterated by circular and amendment was to induce the people to secure *written evidence of title* to property occupied by them.

The same purpose forms the central idea of the Philippine "Mortgage Law." Its end was the recording of ownership to property. It confers great privileges upon those who so record their ownership and makes the transmission of unrecorded holdings difficult and uncertain. Realizing, however, that the great mass of the people were without record title of any kind a procedure is provided by Sections 389 *et seq.* of such law by which the people can get their ownership of record. Section 390 provides:

"To facilitate the compliance of the preceding

article (relating to the value in evidence of recorded documents) *to owners who lack recorded title of ownership,* no matter at what period the acquisition took place, they shall be permitted to record their interests, etc."

This section expressly recognizes *ownership* of land in those who may not have a record title, and provides a means by which they can get their ownership recorded. It was never required as a condition for such record that the applicant first show that he or his predecessors in interest had secured a government grant. It simply required proof of possession.

It was not the purpose of Spain to dispossess the people of their property, nor to assert the ownership of the State over it. In fact, by most of such decrees, special inducements were offered occupants of lands that they might be persuaded to secure written titles. With scarcely an exception they contain a modification of the ordinary prescriptive period in favor of such occupants, permitting them to record ownership upon an occupation of six, twelve or twenty years. It is somewhat anomalous to read into decrees which specifically recognize prescription, and which establish special periods in favor of the occupiers, a repeal of all prescription.

Much of this legislation appears to have been necessitated by reason of grants made by officers whose authority was questioned or questionable.

In the royal cedula of October 15, 1754 (cited in the Valenton case, p. 545) further provisions are made for the extension of title deeds.

The Supreme Court of the Philippine Islands hold that there could be no title without possession of such deeds. Yet in that law it is said:

"Where such possessors shall not be able to produce title deeds it shall be sufficient if they shall show that ancient possession, *as a valid title by prescription;* provided, however, that if the lands shall

not be in a state of cultivation or tillage, etc." (p. 546).

The Court take the view that "ancient possession" can only refer to grants prior to 1700, mentioned in the following sections. This construction might be debatable, but the question becomes academic by reason of the royal decree of June 25, 1880, providing complete regulations for the adjustment of royal lands. Arts. 4 and 5 read as follows:

> "Art. 4. For all legal effects, those will be considered proprietors of the royal lands herein treated who may prove that they have possessed the lands without interruption during the period of ten years, by virtue of a good title and in good faith.
>
> Art. 5. *In the same manner, those who without such title deeds may prove that they have possessed their said lands without interruption for a period of twenty years, if in a state of cultivation, or for a period of thirty years if uncultivated, shall be regarded as proprietors thereof* (p. 549).

Thus we have a period of thirty years' possession recognized as causing the possessor to be regarded as the proprietor thereof. This would seem to be an explicit statutory recognition of the existence of the general or common law right.

The Supreme Court of the Philippine Islands is evidently troubled by this section, for they say:

> "It must be admitted from the wording of the law that the question is not free from doubt. Upon a consideration, however, of the whole matter, that doubt must, we think, be resolved in favor of the State. The following are some of the reasons which lead us to that conclusion:" (P. 550).

It is respectfully submitted that the reasons which the Supreme Court adduce for the purpose of showing

that the plain language of the Statute is not plain, are wholly unsatisfactory.

Surely the taking of property from one whose possession and that of his ancestors goes back to time "when the memory of man runneth not to the contrary" must be based upon some clear reasons. (Rec., p. 37.)

HISTORY OF THE DEGREE OF 1880 MAKES IT CERTAIN THAT THE LAW INTENDED TO RECOGNIZE ACQUISITIVE PRESCRIPTION.

An important part of the history of the regulations of June 25, 1880, which contain an elaborate Code of Public Land Laws, is contained in the report of the Council of State thereon (to be found in the "Guia de Compradores de Terreños Baldios y Realengos de Filipinas," by Berriz, 1886, pages 17-23). From this report we quote, translating literally rather than idiomatically:

> "The Council of State commends the importance of the subject, showing that almost all property in the Philippines is found in the identical condition of that of Ramirez, wherefore that ordered by the Directorate would disturb in great degree the rights of proprietors (land owners); and in order to avoid such complications it proposes that general rules be promulgated to fix the status of property, upon the basis of determining a period of 20 to 30 years, *within which the possession of land becomes legalized, even though usurpation exists;* that for sales made outside of this period, terms be fixed for making an adjustment between the State and the purchaser according to whether the lands have been placed under cultivation or not. * * *
>
> "* * * In such belief the Council deems that it should commence with the *principle that the lapse of a fixed period legalizes completely all possession,* shortening or lengthening this period according to whether or not there are present good faith and just (color of) title, which are the most important cir-

cumstances or conditions in general law for the prescription of things. * * *

"As to possessors in good faith and under just (color of) title, whether the lands are cultivated or not, it is sufficient without doubt, to establish the ordinary prescription of ten years, since under the especial conditions in the islands and, above all, in view of the necessity and urgency of placing upon a solid basis this class of property in the Archipelago, it would seem to be excessive to exact a greater number of years even treating of uncultivated lands, if any difference were to be established in this regard. But for those who lack title (titulo), possession must be shown for a greater number of years, and there must be established besides the distinction between uncultivated and cultivated lands, since apart from the interest of economic and social order which commend the facilitation of the acquisition and the ownership of said lands, there should not be forgotten the doctrine of law which can never consent to the leveling of the possessor with title and him who lacks same, nor to rewarding equally him who, by his labors, has purged in a certain degree the vice of his acquisition, contributing furthermore to augment the common wealth, and him who has not employed his forces and capital in the cultivation of what he has usurped; an equal distinction it is also proper to adopt for the cases of adjustment which will obtain in the case of all persons who cannot be considered proprietors by prescription" (*i. e.*, those whose possession has been for less than the fixed period). * * *

"* * * In resumé, it being the purpose to constitute and fix the ownership of former public lands in the Philippines by the uninterrupted possession of the same, the Council, omitting discussion of the other doctrines which are recommended, which it considers acceptable in general and which are not

so directly related with that high purpose, deems it proper to adopt the three following bases:

"1. There shall be considered as owners, *for all legal purposes,* of the lands in question, those who may establish that they have possessed the same without interruption during ten years under just (color of) title and in good faith.

"2. Equally there shall be considered as owners those who, lacking title, may establish that they have possessed the said lands without interruption for 20 years, if the same are found under cultivation, and for 30 years if the said lands are found uncultivated; and

"3. The interested parties who are not found included in the two preceding provisions *may legalize* their possession *and, therefore, acquire ownership* of the said lands, by means of adjustment in accordance with the price at the original adjudication, or at the time of the entry thereon if cultivated lands are in question, and with the price they may have at the time of the claim, if they are uncultivated lands."

The language of this report, upon which the regulations of June 25, 1880, were adopted, leaves no doubt as to the intention of the lawmakers as expressed in said regulations. The repeated reference to the acquisition of ownership by mere lapse of time; the avowed intention to recognize as owners those whose possession had ripened into title, and the significant distinction made between those recognized as owners by prescription and those who, as occupants of public lands were not possessed thereof for a sufficient period, and who were required to pay its value—or, in other words, to acquire ownership by purchase—all demonstrate to a certainty that the patents issued by virtue of these regulations were not intended to operate as grants, but as a recog-

nition of vested rights acquired by continued possession. The State conferred written evidence of title under these regulations, not ownership. Ownership was acquired by the lapse of the period of prescription, and was formally recognized and evidenced by the issuance of the patent.

In this connection it is important to note carefully that the dual use of the English word "title" is not applicable to the Spanish "titulo." We speak of "having title" and "giving title," meaning thereby "being the owner" and "transferring ownership"; we also employ the word "title" in a distinct sense meaning the tangible evidence of ownership. The Spanish word *"titulo"* is employed only in this latter sense. Where the regulations provide, therefore, that the State shall issue a *"titulo"* in favor of owners of public lands who have acquired ownership by prescription, it cannot be interpreted to mean that a grant shall be made in favor of these owners, but only that a paper title shall be issued evidencing and recognizing their ownership. In fact, their ownership is expressly recognized, and as owners no grant is needed nor could a grant in their favor convey anything to them or add anything to their ownership. On the other hand, "the interests of economic and social order" are subserved by causing the issuance of recorded paper title, and this is expressly avowed as the purpose and motive of the legislation in question.

The distinction between *"dominio"* (ownership) and *"titulo"* (title, so called) is both plain and vital, and is emphasized throughout the Spanish law.

Article 348 of the Civil Code, defines ownership as follows:

> "Ownership (*dominio*) is the right to enjoy and dispose of a thing, without further limitations than those established by law."

Article 1930 provides:

> "Ownership (*dominio*) and other property rights are acquired by prescription in the manner and under the conditions specified by law."

One of these conditions in case of *ordinary* prescription (less than 30 years) is by Art. 1940 a "proper title," (*"justo titulo"*). A "proper title" is then defined by Article 1952 as follows:

> "By a proper title (*titulo*) is understood that which legally suffices to *transfer* the ownership (*dominio*) or property right, the prescription of which is in question."

"Extraordinary" prescription is then provided for by Art. 1959:

> "Ownership (*dominio*) and other property rights in real property shall also prescribe by uninterrupted possession of the same for thirty years without the necessity of title (*titulo*) or good faith."

The necessary conclusion from these provisions is that thirty years' possession takes the place of title (*titulo*) in the sense of an explicit *"transfer"* of ownership, and of itself confers or vests ownership (*dominio*) without any further requirement in the way of grant, conveyance or registry. It does not need to support itself upon the presumption of a lost grant, as in English common law; on the contrary, it expressly dispenses with the necessity of any grant, actual or presumed.

Alcubilla also defines *"titulo"* as the "juridical inception of the acquisition of property" (*el origen juridico de la adquisicion*), and points out that in many Articles of the Civil Code and in the Mortgage Law the word is used in a still more limited sense as the "registrable *instrument*, or the instrument which *evidences the acquisition* of ownership" (vol. 8, p. 836, note 3).

Moreover, the ownership (*dominio*) thus acquired is the same as absolute "legal title" in fee simple in the English common law sense. It is the broadest possible word to express complete dominion, and there is no shadow of justification for attempting to limit it to a

mere "equitable claim." (Rec., fol. 293.) The Spanish law is not encumbered by painful distinctions between "legal" and "equitable" titles and estates, and when it says ownership (*dominio*) it means ownership and not mere usufruct (*usufructo*), a wholly different legal conception (Civ. Code, Art. 467, *et seq.*)

Therefore, when Mateo Cariño or his ancestor had had possession of the land in suit for 30 years, he had the full absolute legal ownership, or as we would say the "legal estate in fee simple"; he needed no grant; he needed no registry, except for evidentiary purposes; and he was entitled to this purely evidentiary registration under the original "Land Registration Act" of 1902 (Sec. 19, Clause First), without regard to the Public Land Act of 1903, or its extension to Benguet in 1905. That furnishes a means of "*perfecting*" or confirming land ownership; his ownership was already perfect by law, and only required registry to perpetuate the evidence of his ownership, and to facilitate its transfer.

It has been argued that the recognition of the possessors of public lands for the required period, as the owners thereof, is not complete because each is required to "do something" before paper title is issued to him. An examination of the regulations discloses that the only thing which such a person is required to do is to make proof of his ownership. It is respectfully submitted that this does not support the conclusion that the ownership is not complete. Indeed it is difficult to conceive how anything less could have been required. Where the law provides that a paper title to lands shall be issued to the owners thereof, it goes without saying that he who applies for such paper title must prove himself the owner by showing the facts of his adverse possession. And any express requirement to this effect in the law does not argue that the adverse possessor's title is incomplete, but rather that the State has adopted an absolutely necessary precaution that the paper title shall be issued to the real owners; nothing more.

POINT V.

The Spanish decrees could not legally have had the effect claimed for them by the Supreme Court of the Philippine Islands in the Valenton case.

Conceding to the Royal Decrees of Spain, for the sake of argument, the greatest possible effect claimed for them in the Valenton *v.* Murciano decision, what do they attempt to do? They recognize, in the first place, a prescriptive title in certain persons, which titles are declared to be good for all legal purposes. They then, it is claimed, seek to provide, as a penalty for failure to record such titles, a reverter, without further proceedings, judicial or otherwise, to the State. Argument is needless to show that under the decisions of our Courts such an enactment would be held unconstitutional and void. It is equally unconstitutional and void under the constitution and laws of Spain.

Law I, Title 34, Book II, Novisima Recopilacion, fixes the punishment of him who by force shall take the goods that another possesses, even though he has a right to them, while Law 2 orders *that no one shall be deprived of his property without first being summoned, heard and conquered by law.* Alcubilla, Vol. 8, p. 776, note 4.

Art. X of the constitution of Spain, adopted June 30, 1876, provides as follows:

> "There shall never be imposed the penalty of con-
> "fiscation of goods, nor shall any one be deprived of
> "his property unless it be by competent authority
> "and for public utility, there being always a corre-
> "sponding indemnity paid in advance. If this re-
> "quisite shall not be complied with, the judges will
> "protect, and if proper, deliver the possession to the
> "one deprived."

This is the equivalent in every respect of the due process of law clause of our constitution.

Careful examination of the provisions of the Laws of the Indies and of the special decrees relating to Public Lands show that the reversion to the State does not apply to lands held by prescriptive right. The Spanish law seems sedulously to avoid any interference with such rights, for we find in one of the very laws cited by the Court below an explicit recognition of the rights of those who hold by prescription. (Laws of the Indies, Book 4, Tit. 12, Law 14, *supra.*)

Article VIII of the Regulations of 1880, cited in support of the theory of reversion of lands held by prescriptive right, does not bear out this view, for it refers to

> "the lands whose possession *they are unlawfully* "enjoying." (Rec., fol. 303.)

Property held by "just prescription" could not be deemed included in this category.

POINT VI.

The plaintiff in error Cariño had, under the Treaty of Paris, a property right, the existence of which has been recognized by Congress.

The Treaty of Paris declares that the cession of the Philippines

> "cannot in any respect impair *the property or rights* "*which by law belong to the peaceful possession of* "*property of all kinds,* of provinces, municipalities, "public or private establishments, ecclesiastical or "civic bodies, or any other associations having legal "capacity to acquire and possess property in the "aforesaid territories renounced or ceded, or of pri-

"vate individuals, of whatsoever nationality such "individuals may be."

(Compilation of Treaties in Force (1904), p. 725.)

If Mateo Cariño possessed any property right or interest in the lands in question, he is clearly protected by the treaty as well as by the settled rules of international law prevailing among civilized nations. It is idle to contend that any property right, whether evidenced by written and formal deed or not, is left unprotected by the treaty.

"The right of property, then, is protected and se- "cured by the treaty; and no principle is better set- "tled in this country, than that an inchoate title to "lands is property.

"Independent of treaty stipulation, this right "would be held sacred. The sovereign who acquires "an inhabited territory, acquires full dominion over "it; but this dominion is never supposed to divest "the vested rights of individuals to property."

Delassus *v.* United States (1835), 9 Peters, 133.

And again in speaking of the Louisiana treaty, this court has said:

"It was never doubted by this Court that prop- "erty of every description in Louisiana was pro- "tected by the law of nations, the terms of the treaty "and the Acts of Congress; nor that in the term "'property' was comprehended every species of "title, *inchoate or perfect,* embracing those rights "which lie in contracts; those which are executory, "as well as those which are executed. In this re- "spect the relation of the inhabitants to their gov- "ernment is not changed. The new government "takes the place of that which has passed away."

Congress in dealing with the recent Insular acquisitions has shown no disposition to violate this principle, as appears from the following sections of the Act temporarily to provide for the affairs of civil government in the Philippine Islands, of July, 1902. The unwillingness of Congress to permit any one living upon the public lands to suffer damage, injury or diminution of right, by reason of the cession, plainly appears in the following sections of the above Act:

"SECTION 12. That all the property and rights "which may have been acquired in the Philippine "Islands by the United States under the Treaty with "Spain, signed December 10, 1898, except such land "or other property as shall be designated by the "President of the United States for Military and "other reservations of the Government of the United "States, are hereby placed under the control of the "Government of said Islands to be administered for "the benefit of the inhabitants thereof, except as "provided in this Act. * * * "

"SECTION 14. That the Government of the Philip-"pine Islands, is authorized and empowered to en-"act rules and regulations and to prescribe terms "and conditions to enable persons to perfect their "title to public lands in said Islands, who prior to "the transfer of sovereignty from Spain to the "United States, had fulfilled all or some of the condi-"tions required by the Spanish laws and royal de-"crees of the Kingdom of Spain for the acquisition "of legal title thereto, yet failed to secure convey-"ance of title; and the Philippine Commission is au-"thorized to issue patent without compensation, to "any native of said Islands, conveying title to any "tract of land not more than sixteen hectareas in "extent, which were public lands and had been act-"ually occupied by such native or his ancestors prior "to and on the 13th of August, 1898."

And as indicating the fear of Congress lest injustice should be done to those who had settled on the public domain, the 16th Section of the Act is significant:

> "That in granting or selling any part of the pub-
> "lic domain, etc., preference in all cases shall be
> "given to actual occupants and settlers; and such
> "public lands of the United States in the actual pos-
> "session or occupancy of any native of the Philip-
> "pine Islands shall not be sold by said Government
> "to any other person without the consent thereto of
> "said prior occupant or settler first had and ob-
> "tained."

Is the protection accorded to such squatters to be refused to Cariño, whose ancestral squatting was prehistoric? Except where the dictum of the famous Prudhomme *"la propriété c'est le vol"* is law, such ownership would be protected anywhere in the world. Even had Cariño had a mere inchoate right or unperfected title he would have been protected from spoliation.

In pursuance of the powers devolved upon them by this legislation, the Philippine Commission promulgated a Land Law known as the Public Land Act, (Act No. 926, Compilation of Laws and Regulations Relating to Public Lands in the Philippine Islands, War Department, Bureau of Insular Affairs, 1908.) Chapter VI of this Law deals with "Unperfected Titles and Spanish Grants and Concessions."

> "SECTION 54: The following described persons
> "or their legal successors in right, occupying public
> "lands in the Philippine Islands, or claiming to own
> "any such lands or an interest therein, but whose
> "title to such lands has not been perfected, may ap-
> "ply to the Court of Land Registration of the Philip-
> "pine Islands for confirmation of their claims and
> "the issuance of a certificate of title therefor, to
> "wit:

* * * *

"4. All persons who were entitled to apply and "did apply for adjustment or composition of title to "lands against the Government under the Spanish "laws and royal decrees in force prior to the royal "decree of February thirteenth, eighteen hundred "and ninety-four, but who failed to receive title "therefor through no default upon their part;

* * * *

"6. All persons who by themselves or their pre- "decessors in interest have been in the open, con- "tinuous, exclusive, and notorious possession and "occupation of agricultural public lands, as defined "by said Act of Congress of July first, nineteen "hundred and two, under a bona fide claim of own- "ership except as against the Government, for a "period of *ten years* next preceding the taking effect "of this Act, except when prevented by war or force "majeure, shall be conclusively presumed to have "performed all the conditions essential to a Govern- "ment grant and to have received the same, and "shall be entitled to a certificate of title to such land "under the provisions of this chapter.

"All applicants for lands under paragraph one, "two, three, four, and five of this section must es- "tablish by proper official records, or documents "that such proceedings as are therein required were "taken and the necessary conditions complied with: "Provided, however, That such requirements shall "not apply to the fact of adverse possession."

The Philippine Commission, as well as Congress, evidently considered that they were merely providing record titles for those who had already acquired property rights guaranteed by the Treaty of Paris. In so doing, Congress and the Commission were complying with their

duty under the Law of Nations. As was recently said by the Supreme Court of the Philippine Islands,

> "The Treaty of Paris not only safeguarded the "right of ownership, but also such rights as pertain "in accordance with law to the peaceful possession "of property of all kinds."
>
> Alfonso Buenaventura *v.* Commanding General, 6 Phil. Reps., p. 607. (Nov., 1906.)

It appears that at the time Cariño's application was made, the Public Land Law (No. 926) had not been extended to the province of Benguet, and upon this fact the Court of First Instance, based its reversal of the judgment of the Land Court.

We have adduced the Act of Congress and the Public Land Law of the Commission for the purpose of showing that Cariño had a property right which the United States has recognized. If he had such property right he could not be deprived of it by any failure of the Philippine Commission (or even of Congress) to pass appropriate legislation enabling him to obtain a record title. Why there was delay in extending the law to Benguet does not appear from the record nor are we informed *aliunde*. The Commission did finally so extend it in 1905. (See Compilation of Laws & Regulations relating to Public Lands in the Philippine Islands. Govm't Ptg. Office, Feby. 1, 1908.) Probably reasons of convenience dictated the delay. But the appellant here does not claim that his rights are in any way derived from or are dependent upon Act 926 of the Philippine Commission. They were rights in existence a century or so before the promulgation of the Treaty of Paris, hence the Court of Land Registration had jurisdiction to register the title.

The case of Alfonso Buenaventura *v.* Commanding General (6 Phil. Rep., 606), decided nearly two years later than the Valenton case, it is respectfully submitted, is in hopeless conflict with the premises upon which the judgment in the Valenton case was predicted. In that

case it was held that a native of the Philippine Islands who has been in possession of a tract of land, for a period of ten years or more, and who had on the date of the Treaty of Paris an inchoate title, has the right to have the same registered. This right was maintained although the land claimed was within the limits of a military reservation, set apart under the authority of the President of the United States.

In the Valenton case, the Court held that the claimant who had occupied the land over thirty years, but had received no paper title thereto, was without any rights of property, and that until he obtained such "deed" the State remained the absolute owner. (3 Phil. Reps., p. 543) and the Court concludes on the point by saying:

> "We hold that from 1860 to 1892 there was no law "in force in these Islands by which the plaintiffs "could obtain the ownership of these lands by pre- "scription, without any action by the State, and that "the judgment below declaring the defendant the "owner of the lands must be affirmed." (P. 557.)

And yet we find the same Court holding in the Buenaventura case that the Act of Congress and the Philippine Land Laws referred to, merely carried out the Treaty obligation to recognize existing rights:

> "The evident intention of Congress was to recog- "nize three classes of lands in these Islands: (1) "Lands of private ownership; (2) lands of purely "public character; and (3) lands occupied or "claimed, with some semblance of equity, by private "parties, but in respect to which there exists no "known grant from the Government. * * * "With respect to the third class, Congress directed "that patents should be issued to the occupants who "were established thereon or to persons who had "acquired equities therein, and that the ownership "of such occupants, equitable owners of said lands "should be confirmed. * * *
>
> "To assert that Congress had the intention of

"authorizing the confirmation of inchoate titles in "the native residents of Bulacan and to refuse a "like privilege to the residents of Corregidor Is- "land is to suppose unjust, illogical, unnatural, and "very unequal legislation, and to doubt the benefi- "cent purposes of the American nation toward the "Filipino people." 6 Phil. Reps., p. 606.

Why it should have appeared unjust to discriminate in favor of Bulacan residents as against those of Corregidor in November, 1906 (date of Buenaventura decision), yet just to discriminate against natives of Benguet in favor of those in other portions of the Archipelago in December, 1906 (date of Cariño decision), we are unable to surmise. In November the Court says:

"Can we attribute to Congress the intention of "extending their favor to some Filipinos and of re- "fusing it to others in like conditions, determining "the selection by chance or in accordance with geo- "graphical limitations?

"As a matter of fact, within the limits of a mili- "tary reservation already established or to be es- "tablished hereafter, there may be found land of pri- "vate ownership, with a perfect and complete title, "or land which has not yet passed to private owner- "ship, but which is in the possession of a private "party, or to which the private party has an initial, "imperfect and incomplete title."

The apparently so quickly shifting views of the Honorable Court cannot have been due to inadvertence, for one of the Judges dissented on the ground that the case was wholly inconsistent with the decision of the Court in the case at bar, the decision in which, although published a month later, seems to have been made earlier.

CARSON, *J.*, dissenting, p. 609, says:

"The invalidity of the applicant's claim of title

"based upon either the first or second grounds, ap-
"pears to be conclusively settled by the as yet un-
"published decision of this court in the case of Mateo
"Cariño *v.* The Insular Government."

6 Phil. Reps., p. 610.

The learned dissenting Justice takes the short and simple, although as we submit, unsound position that prescription could confer no rights to public lands under the Spanish law and that, therefore, neither the Treaty provision, the Sections of the Act of the Philippine Law above quoted, nor the Public Land Laws of the Philippine Islands could apply to persons who claim by mere adverse possession.

"But I think it has been shown in accordance with
"the general doctrine laid down by this court in such
"cases, that the mere possession of public agricul-
"tural lands for however long a period of time prior
"to the transfer of sovereignty from Spain to the
"United States does not give the occupant an equit-
"able or an imperfect title as against the United
"States; and, therefore, even were we to admit
"the authority of the Commission to vest title in
"occupants of public lands within military reserva-
"tions, under the provisions of the first paragraph
"of this section, the applicant in this case cannot
"set up a claim by virtue of such legislation."

6 Phil. Reps., pp. 617, 618.

We respectfully submit that the learned dissenting Justice is surely logical in believing the Buenaventura case to be wholly irreconcilable with the Valenton case. The Buenaventura case appears to be the latest utterance of the Supreme Court of the Philippine Islands. It makes no reference to either of the other cases, and the land law of the Philippine Islands upon the question of adverse possession must remain in a condition

of untempered chaos until this Court has spoken the final word.

The two cases cannot be reconciled. Even that potent instrument of legal development the "distinction" fails. Either Mateo Cariño had something that was protected by the Treaty or he had not. If he had not, the judgment of the Supreme Court is logical for he does not claim to have acquired other rights since 1898. If he had any property rights of any kind, recognized by the Treaty, the judgment of the Supreme Court is wrong and the judgment of the Court of Land Registration must be affirmed.

The somewhat nihilistic views of property entertained by the Philippine Supreme Court in the Valenton and Cariño cases are not in accordance with those entertained by this Court. For we find it said in one of the leading cases on the subject of ancient grants:

> "This court has defined property, to be any right, "legal or equitable, inceptive, inchoate or perfect, "which, before the Treaty with France in 1803 or "with Spain in 1819, had so attached to any piece or "tract of land, great or small, as to affect the con- "science of the former sovereign 'with a trust,' and "make him a trustee for an individual, according "to the law of nations, of the sovereign himself, the "local usage or custom of the colony or district; ac- "cording to the principles of justice, and rules of "equity." Strother *v.* Lucas (1838), 12 Peters, p. "436."

As we have shown under Point I, the Court of Land Registration had full jurisdiction in the premises, without regard to Act 926, which we have referred to merely to show the general policy and attitude of the government towards Philippine property rights.

Act 926 being now in force in Benguet, Cariño should be allowed to register his land even assuming, as the

Court of First Instance did, that he had only an "*imperfect*" title.

An affirmance of the judgment in this case would, we respectfully submit, minimize the effects of Art. VIII of the Treaty of Paris, run contrary to the general rule of international law, and be at variance with both the intentions of Congress and the laws of the Philippine Commission for the protection of those who had lived from time immemorial upon certain lands, but who had for any reason neglected or been unable to obtain formal evidence of ownership. That such evidence was not always easy to obtain appears from the preface to the Compilation of Laws and Regulations heretofore referred to, from which it appears that the area of public domain in the Philippine Islands according to some estimates reached as high as one-half the area of the Archipelago:

> "The land is most fertile and for the greater part "naturally irrigated. There was a very great de- "mand for this land, but owing to the irregularities, "frauds and delays in the Spanish system, the "natives generally abandoned efforts to secure a "good title and contented themselves with remaining "on the land as simple squatters, subject to eviction "by the State."

Under all these circumstances, it would be a strange anomaly to deny Mateo Cariño's legal ownership of the land which has been so long in the possession of his ancestors and inherited and possessed by him under the law of his people. Not only would such a result be repugnant to elementary notions of common justice, and to the Treaty, the Act of Congress and the Laws of the Philippine Commission, but it would also be in conflict with the present American rule in the Philippine Islands as to title by adverse possession, which Law (being Section 41 of Act 190 of the Philippine Commission) reads as follows:

> "Ten years actual adverse possession by a person

"claiming to be the owner for that time of any land "or interest in land, uninterruptedly continued for "ten years by occupancy, descent, grants or other- "wise, in whatever way such occupancy may have "commenced or continued, shall vest in every actual "occupant or possessor of such land a full and com- "plete title, saving to the persons under disabilities "the rights secured by the next section. In order to "constitute such title by prescription or adverse "possession, the possession by the claimant or by "the person under or through whom he claims must "have been actual, open, public, continuous, under a "claim of title exclusive of any other right and ad- "verse to all other claimants. But failure to occupy "or cultivate land solely by reason of war shall not "be deemed to constitute an interruption of posses- "sion of the claimant, and his title by prescription "shall be complete, notwithstanding such failure to "occupy or cultivate the land during the continuance "of war." (Philippine Code of Civil Procedure, Sec. 41.)

Criticism of the Valenton Case.

As it was upon the authority of this case that the Philippine Supreme Court defeated the plaintiff we crave indulgence for discussing the views of that court to a length which may appear tedious.

The grounds upon which the Court bases its decision will be taken up *seriatim*.

(1) The Royal Decree of 1880 supra p 47 only confers rights upon those who can show proof of occupancy under this very Decree.

Thus the court look upon this decree as narrowing rather than as recognizing Cariño's rights. We do not find anything in these regulations in the nature of expropriation. Under Articles 4 and 5 no titles or rights are created, but rights already acquired are fully recognized. Is it fair to construe this statute to the effect that since Cariño did not immediately bring proceedings

under it he, therefore, forfeited the rights otherwise consequent upon thirty years' peaceful and undisturbed possession under claim of title? Art. 4 refers to those who have already a title deed. Did they too have no property right?

Again it will be noted that Articles 4 and 5 do not provide that the possessors of public lands for the required periods *may acquire* the ownership, nor does it contain any other provision which could by any possibility indicate that anything remained to be acquired by such possessors other than a "*titulo*" or tangible evidence of ownership. On the contrary, it provides that he who shows such possession shall forthwith be considered as owner of the lands for all legal purposes. On the other hand, Article 6 (applicable to persons whose possession had not covered the required period), provides that such persons "may acquire the ownership" of such lands, by certain means. This language is in sharp contrast to the language employed in Articles 4 and 5. The provision that those whose proven possession covers the prescribed period shall be considered owners, coupled with the provision that possessors for shorter periods might "acquire ownership," indicates unquestionably that the first named had already acquired ownership, and that the regulations were not necessary, nor intended, to perfect such ownership, but merely to provide for the issuance of written evidence thereof in the shape of a "*titulo*" or patent. The language of the report of the Council of State (above quoted) wherein it is expressly laid down, as the fundamental doctrine upon which these regulations are justified, that possession of public lands ripens into complete ownership, is a complete corroboration of this argument.

(2) The 1st article of the Decree declares that those lands as to which the State has never executed any deeds are the property of the State and such a declaration is inconsistent with the idea that title may be obtained by prescription.

As a general proposition this does not seem at all convincing, but as Art. 5 (and the other decrees as well), shows that the doctrine of ancient possession was also recognized, such generalities are not germane.

(3) The Spanish word in the preamble of the Decree "detentados" meant "wrongfully withheld" and this idea of wrongful detention is inconsistent with the idea that by Art. 4 the plaintiff in 1870 became the absolute owner of the lands in question and is absolutely inconsistent with the idea that good title could be obtained by uninterrupted possession.

This mere verbal criticism appears to us wholly inconsistent with the spirit of the law which expressly regards as proprietors those who, without deeds, have possessed uncultivated land for a period of thirty years.

It will be further noted that the word "detentados" is not employed in the body of the regulations, but solely in the approval thereof by the Colonial Minister; also that the word "detentados" is employed repeatedly in the report of the Council of State, recommending the promulgation of these regulations, which constitute an authoritative commentary of the law. As employed in the approval of the Colonial Minister, it is plainly a word of general description, signifying the public lands which have been usurped, at one time or another, by private persons. Of course, all adverse possession is a wrongful withholding until such time as by the lapse of the period of prescription it ripens into title. It is not significant that all public lands in the possession of third persons should thus be referred to, in general terms in which no distinction is made between those possessed for the prescribed period and those possessed only for a shorter time, as usurped land.

On the other hand, it will be noted that the word "detentado" is employed in the report of the Council of State only with reference to the lands possessed by private persons for less than the period of prescription. If

any argument whatever is to be based upon the use of this word, it is that its careful use with reference only to adverse possession for less than the period of prescription indicates that land acquired by lapse of the said period has ceased to be "detentado" or wrongfully withheld, although its usurpation was necessarily wrongful or illegal in its incipiency.

(4) The Supreme Court affects to consider that certain language in the preface of this decree and regulations shows that those

> "who held with color of title and good faith were, notwithstanding, holding wrongfully, and that true ownership should be substituted for their possession." (Pp. 551-2.)

The phrase referred to, upon which this inference is based, is as follows:

> "These regulations refer not only to tenants of royal lands in good faith and by virtue of a valid title, but also to those who, lacking these, may, either by themselves reducing such lands to cultivation or by the application of intelligence and initiative, causing their cultivation by others who lack these qualities, be augmenting the wealth of the Archipelago." (P. 551.)

It is respectfully submitted that the fourth reason is destructive of the third, for the language of this preface refers to the tenants of royal lands *in good faith* and by virtue of a valid title, and we fail to see how such persons could be considered as wrongful detainers of such property without completely confounding plain language.

(5) The fifth reason is based upon the circular of August 10, 1881, published in the Gaceta de Manila, August 11, 1881. It is as follows:

"Should possessors of royal lands under color of title and in good faith seek adjustment?

It is evident that they must do so, for it is to them that article 4 of the regulations refers, as also the following article covers other cases of possession under different circumstances. It should be well understood by you, and you should in turn have it understood by others, that the adjustment of lands whose ownership has not passed to private individuals by virtue of cession by competent authorities, is optional only for those within the limits of the common district (legua comunal) as provided by article 7. In all other cases where the interested parties shall fail to present themselves for the adjustment of the lands occupied by them they shall suffer the penalties set forth in article 8 of said regulations."

In addition to the fact that it does not appear by whom this circular was written we do not see that it militates against our contention that thirty years' possession was recognized as constituting the possessor a proprietor. Doubtless the Spanish Government might have imposed penalties for the non-registration of title deeds or the non-proving of title required by prescription. This would not detract from the plain language of the Code and of the law in question.

Moreover, Article 8 expressly referred only to those "unlawfully enjoying" public lands which could not apply to lawful owners by prescription.

In this circular no attempt is made to distinguish between possessors who have so held their lands for the period fixed for prescription and those who have so held for a shorter period. It must be deemed as applicable only to the latter class, for the reason that as to the former the threatened forfeiture would be inoperative and impossible as contrary to the organic law prohibiting forfeiture of property.

(6) The next reason adduced by the Supreme Court is that a royal decree of September 24, 1884, evidently intended that claimants by prescription should prove their rights.

We see nothing in this law inconsistent with our view of the case. On the contrary, Article 11 says:

> "If the adjustment is not free, because the applicant has not proved his right by prescription, then no deed can be issued until the proper payment has been made.
>
> * * *
>
> If no protest or claim shall be filed, and the adjustment must be free because the occupant *has proved title by prescription,* as provided in articles 4 and 5 of the regulations promulgated June 25, 1880, the proceedings shall be duly approved, and the head officer of the province will, in his capacity of deputy director general of the civil administration, issue the corresponding title deed."

In addition to the laws mentioned, Justice Willard in writing the decision of the Supreme Court in the case at bar (fol. 303) refers to the Royal Decree of the 13th of February, 1894, in which it is provided, Article 4, that the title to all agricultural lands which were capable of adjustment under the Royal Decree of the 25th of June, 1880, but the adjustment of which has not been sought at the time of the promulgation of this decree in the Gaceta de Manila, will revert to the State. Any claim to such lands by those who might have applied for the adjustment of the same, but who have not done so at the above mentioned date, will not avail them at any time.

He seems, however, to have overlooked the latter part of Section 21 of such decree, which provides that "persons in possession, not included in the provisions of this chapter, *can have prescriptive title to alienable Crown lands, according to the common law.*" The common law, of course, meant the general law contained in the

Civil Code. That this term applies to the law of prescription in the Code is further evident from Sec. 35 of the mortgage law.

It would seem to us that the Supreme Court of the Philippine Islands has failed to differentiate between the possession of property rights and mere modes of proof. The Statutes referred to generally apply to two things:

First, the acquisition by the possessor or settler of a portion of the public land.

Second, the record of evidence of ownership by those who were claiming title under written instruments or by prescription.

Is there anything here in conflict with the Civil Code? On the contrary by the cultivation of the lands one could acquire it ten years sooner than under the general law. The uncultivated land alone need be held as long as provided for in the Code.

In addition thereto, the recognition in the decree of 1894 of the existence of the common law establishes that the land laws were not in derogation of that rule, but merely prescribed shorter periods of time during which public lands might be acquired.

Aside from its unsoundness on legal grounds, the decision in Valenton *v.* Murciano is distinguishable from the case at bar. There the Court expressly found that in 1860 the land in suit belonged to the State; here it appears to have belonged to Cariño's ancestors from time immemorial. There the Spanish authorities had expressly granted the land to the adverse claimant, and the Spanish laws provided a remedy against such a grant of which the plaintiff had never availed himself. There the Court merely permitted an existing injustice, committed by the Spanish authorities, to remain in effect after the treaty the same as before; here the Court below has itself disregarded the plaintiff's rights, in spite of the treaty. And finally, that was an ejectment suit, in which

the plaintiff must prevail, if at all, by the superior strength of his own title; while this is a peculiar statutory proceeding designed to facilitate the establishment and perpetuation of just such titles as that of the plaintiff, legally perfect, and lacking only record evidence.

There is neither evidence nor finding that the Spanish Government ever owned or claimed the land; in fact the finding is to the contrary, and the Philippine Government is a mere intruder, with neither legal title nor just claim.

Conclusion.

In conclusion we sum up the argument as follows:

(1) Cariño had a valid, undisputed title to the land by the law in force in the locality, and under the Spanish laws guaranteeing and confirming the titles of the Indians. His title is, therefore, property *jure gentium* and cannot be taken from him by the Government without violating the Treaty of Paris and the Constitution of the United States, since the right of property in land is a fundamental or natural right to which the Fifth Amendment applies as well in unincorporated as in incorporated territory of the United States.

(2) But even assuming that the native inhabitants of the islands had no rights which either Spain or the United States were bound to respect, yet under the Spanish law of prescription the appellant had acquired property rights which could not be affected by the change of sovereignty.

(3) The decisions of this Court, the action of the Treaty making power, and the Acts of Congress and the Philippine Commission indicate a clear intention to leave all individual property rights unaffected by the cession. The decision in this case constitutes an anomaly irrecon-

cilable with other decisions of the Insular Supreme Court, is contrary to the ancient Spanish law, the Spanish Civil Code, the Spanish Constitution, the Treaty, and the United States Constitution, and should be reversed.

All of which is respectfully submitted this 20th day of November, 1908.

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APPENDIX.

SPANISH AND LATIN TEXTS QUOTED FROM IN BRIEF.

RECOPILACION DE LEYES DE LAS INDIAS.

Libro Segundo.

Titulo I.

De las Leyes, Provisiones, Cedulas y Ordenanzas Reales.

Ley IV.

El Emperador Don Carlos y la Princesa Doña Juana Gobernadora, en Valladolid, à 6 de Agosto de 1555.

Que se guarden las leyes que los Indios tenìan antiguamente para su gobierno, y las que se hicieren de nuevo.

Ordenamos y mandamos, que las leyes y buenas costumbres que antiguamente tenìan los Indios para su buen gobierno y policìa, y sus usos y costumbres observadas y guardadas despuès que son cristianos, y que no se encuentran con nuestra sagrada religiòn, ni con las leyes de este libro, y las que han hecho y ordenado de nuevo se guarden y ejecuten; y siendo necesario, por la presente las aprobamos y confirmamos, con tanto que Nos podamos añadir lo que fuèremos servido, y nos pareciere que conviene al servicio de Dios nuestro Señor, y al nuestro, y à la conservaciòn y policìa Cristiana de los naturales de aquellas Provincias, no perjudicando à lo que tienen hecho, ni à las buenas y justas costumbres y Estatutos suyos.

Ley V.

El Emperador Don Carlos, en Toledo, à 4 de Diciembre de 1528, cap. 15. Y à 24 de Agosto de 1529.

Que las leyes que fueren en favor de los Indios se executen sin embargo de apelaciòn.

Deseando la conservaciòn y acrecentamiento de nuestras Indias, y conversiòn de los naturales de ellas à nuestra Santa Fè catòlica, y para su buen tratamiento, hemos mandado juntar en esta Recopilaciòn todo lo que està ordenado y dispuesto en favor de los Indios, y añadir lo que ha parecido necesario y conveniente. Y porque nuestra voluntad es, que se guarde, y particularmente las leyes que fueren en favor de los Indios, inviolablemente: Mandamos à los Virreyes, Audiencias, Gobernadores, y à los demàs Jueces y Justicias, que las guarden y cumplan, y hagan guardar, cumplir y ejecutar en todo y por todo, sin embargo de apelaciòn ò suplicaciòn, sò las penas en ellas contenidas, y demàs de la nuestra merced, y de perdimiento de todos sus bienes para nuestra Càmara y Fisco, y suspensiòn de sus oficios.

Libro Cuarto.

Titulo I.

De los Descubrimientos.

Ley VI.

El mismo, (Don Felipe II) Ordenanza 29 de poblaciones. Don Felipe III, en Madrid, à 11 de Junio de 1621. Don Carlos II y la Reina Gobernadora.

Que en las capitulaciones se excuse la palabra conquista, y usen las de pacificaciòn y poblaciòn.

Por justas causas y consideraciones conviene, que en todas las capitulaciones, que se hicieren para nuevos descubrimientos, se excuse esta palabra *conquista*, y en su lugar se use de las de *pacificaciòn y poblaciòn*, pues habièndose de hacer con toda paz, y caridad, es nuestra voluntad, que aun este nombre, interpretado contra nues-

tra intenciòn, no ocasione ni dè color à lo capitulado, para que se pueda hacer fuerza, ni agravio à los Indios.

Ley X.

Don Felipe II, Ordenanza 20 de poblaciones.

Que los descubridores no se embaracen en guerras ni bandos entre los Indios, ni los hagan daño, ni tomen cosa alguna.

Los descubridores por mar, ò tierra, no se embaracen en guerra ninguna, entre unos y otros Indios, ni los ayuden ni revuelvan en cuestiones por ninguna causa, ni razòn que sea: no les hagan mal, ni daño, ni tomen sus bienes si no fueren por rescate, ò dàndoselo ellos por su libre voluntad.

Titulo IV.

De las Pacificaciones.

Ley VIII.

El Emperador Don Carlos, Ordenanza 8 de 1523.

Que no se consienta que à los Indios se les haga guerra, mal, ni daño, ni se les tome cosa alguna sin paga.

Ordenamos y mandamos à los Gobernadores, Cabos, y nuevos descubridores, que no consientan, ni permitan hacer guerra à los Indios, si no fuere en los casos expresados en el tìtulo de la guerra, ni otro cualquier mal, ni daño, ni que se les tome cosa ninguna de sus bienes, hacienda, ganados, ni frutos, sin que primero se les pague, y dè satisfacciòn equivalente, procurando, que las compras, y rescates sean à su voluntad, y entera libertad, y castiguen à los que les hicieren mal tratamiento, ò daño, para que con facilidad vengan en conocimiento de nuestra Santa Fè catolica.

Titulo XII.

De la Venta, Composicion, y Repartimientio de Tierras, Solares, y Aguas.

Ley V.

El Emperador Don Carlos, en Barcelona, à 4 de Abril de 1532. Don Felipe II, Ordenanza de Audiencias de 1563, y Ordenanza 58, en Toledo, à 25 de Mayo de 1596.

Que el repartimiento de tierras se haga con parecer del Cabildo, y sean preferidos los Regidores.

Habièndose de repartir las tierras, aguas, abrevaderos y pastos entre los que fueren à poblar, los Virreyes ò Gobernadores que de Nos tuvieren facultad, hagan el repartimiento con parecer de los Cabildos de las Ciudades ò villas, teniendo consideraciòn à que los Regidores sean preferidos, si no tuvieren tierras, y solares equivalentes; y à los Indios se les dejen sus tierras, heredades y pastos, de forma que no les falte lo necesario, y tengan todo el alivio y descanso posible para el sustento de sus casas y familias.

Ley VII.

Don Felipe II, en el Pardo, à 6 de Abril de 1588.

Que las tierras se repartan sin acepciòn de personas y agravio de los Indios.

Mandamos, que los repartimientos de tierras, asì en nuevas poblaciones, como en lugares y tèrminos que ya estuvieren poblados, se hagan con [illegible]a justificaciòn, sin admitir singularidad, acepciòn de personas, ni agravio de los Indios.

Ley IX.

El mismo, en Madrid, à 11 de Junio de 1594.

Que no se den tierras en perjuicio de los Indios, y las dadas se vuelvan à sus dueños.

Mandamos que las estancias y tierras que se dieren à

los Españoles, sean sin perjuicio de los Indios, y que las dadas en su perjuicio y agravio, se vuelvan à quien de derecho pertenezcan.

Ley XIV.

Don Felipe II, en 20 de Noviembre de 1578. Y à 8 de Marzo de 1589. Y en el Pardo, à 1°. de Noviembre de 1591.

Que à los poseedores de tierras, estancias, chacras y caballerìas con legìtimos titulos, se les ampare en posesiòn, y las demàs sean restituidas al Rey.

Por haber Nos sucedido enteramente en el señorìo de las Indias, y pertenecer à nuestro Patrimonio y Corona Real los baldìos, suelos y tierras que no estuvieren concedidos por los señores Reyes nuestros predecesores, ò por Nos, ò en nuestro nombre, conviene que toda la tierra que se posee sin justos y verdaderos tìtulos, se nos restituya, segùn y como nos pertenece, para que reservando ante todas cosas lo que à Nos, ò à los Virreyes, Audiencias y Gobernadores pareciere necesario para plazas, exidos, propios, pastos y baldìos de los Lugares y Concejos que estàn poblados, asì por lo que toca al estado presente en que se hallan, como al porvenir, y al aumento que pueden tener, y repartiendo à los Indios lo que buenamente hubieren menester para labrar y hacer sus sementeras y crianzas, *confirmàndoles en lo que ahora tienen*, y dàndoles de nuevo lo necesario, toda la demàs tierra quede y estè libre y desembarazada para hacer merced, y disponer de ella à nuestra voluntad. Por todo lo cual ordenamos y mandamos à los Virreyes y Presidentes de Audiencias Pretoriales, que cuando les pareciere señalen tèrmino competente para que los poseedores exhiban ante ellos, y los ministros de sus Audiencias, que nombraren, los tìtulos de tierras, estancias, chacras y caballerìas; y amparando à los que con buenos tìtulos y recaudos ò justa prescripciòn poseyeren, se nos vuelvan y restituyan las demàs, para disponer de ellas à nuestra voluntad.

Ley XVI.

El Emperador Don Carlos y la Emperatriz Gobernadora, en Ocaña, à 27 de Febrero de 1531. Don Felipe III, en el Pardo, à 14 de Diciembre de 1615, y en Madrid, à 17 de Junio de 1617.

Que se den y vendan las tierras con las calidades de esta ley, y los interesados lleven confirmación.

Por evitar los inconvenientes, y daños, que se siguen de dar ò vender caballerìas, peonìas y otras mensuras de tierra à los Españoles en perjuicio de los Indios, precediendo informaciones sospechosas de testigos: Ordenamos y mandamos, que cuando se dieren, ò vendieren, sea con citatiòn de los Fiscales de nuestras Reales Audiencias del distrito, los cuales tengan obligaciòn de ver y reconocer con toda diligencia la calidad y deposiciones de los testigos: y los Presidentes y Audiencias, si gobernaren, las den ò vendan, con acuerdo de la Junta de Hacienda, donde ha de constar ques nos pertenecen, sacàndolas al pregòn y rematàndolos en pùblica almoneda, como la demàs hacienda nuestra, mirando siempre por el bien de los Indios; y en caso que se hayan de dar ò vender por los Virreyes, es nuestra voluntad, que no intervengan ninguno de los dichos ministros; y del despacho que se diere à los interesados, han de llevar confirmaciòn nuestra dentro del tèrmino ordinario, que se observa en las mercedes de encomiendas de Indios.

Ley XVII.

Don Felipe IV, en Zaragoza, à 30 de Junio de 1646.

Que no se admita à composiciòn de tierras que hubieren sido de los Indios, ò con tìtulo vicioso, y los Fiscales y Protectores sigan su justicia.

Para màs favorecer y ampara à los Indios, y que no reciban perjuicio: Mandamos que las composiciones de tierras no sean de las que los Españoles hubieren adquirido de Indios contra nuestras Cèdulas Reales y Ordenanzas, ò poseyeren con tìtulo vicioso, porque en estas es

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nuestra voluntad, que los Fiscales-Protectores ò los de las Audiencias, si no hubiere Protectores-Fiscales, sigan su justicia, y el derecho que les compete por Cèdulas y Ordenanzas, para pedir nulidad contra semejantes contratos. Y encargamos à los Virreyes, Presidentes y Audiencias, que les den toda asistencia para su entero cumplimiento.

Ley XVIII.

El mismo, en Madrid, à 16 de Marzo de 1642, y en Zaragoza, à 30 de Junio de 1646.

Que à los Indios se les dejen tierras.

Ordenamos, que la venta, beneficio y composiciòn de tierras se haga con tal atenciòn, que à los Indios se les dejen con sobra todas las que les pertenecieren, asì en particular, como por comunidades, y las aguas y riegos; y las tierras en que hubieren hecho acequias, ù otro cualquier beneficio, con que por industria personal suya se hayan fertilizado, se reserven en primer lugar y por ningùn caso se les quedan vender ni enajenar; y los Jueces que fueren enviados, especifiquen los Indios que hallaren en las tierras y las que dejaren à cada uno de los tributarios, viejos, reservados, Caciques, Gobernadores, ausentes y Comunidades.

Ley XIX.

El mismo, allì, à 30 de Junio de 1646.

Que no sea admitido à composiciòn el que no hubiere poseìdo las tierras diez años, y los Indios sean preferidos.

No sea admitido à composiciòn de tierras el que no las hubiere poseìdo por diez años, aunque alegue que las està poseyendo, porque este pretexto solo no ha de ser bastante; y las Comunidades de Indios sean admitidas à composiciòn, con prelaciòn à las demàs personas particulares, hacièndoles toda conveniencia.

Libro Sexto.

Titulo Primero,

De los Indios.

Ley I.

Don Felipe II, en Madrid, à 24 de Diciembre de 1580. Don Carlos II, y la Reina Gobernadora.

Que los Indios sean favorecidos, y amparados por las Justicias Eclesiàsticas, y Seculares.

Habiendo de tratar en este libro la materia de Indios, su libertad, aumento, y alivio, como se contiene en los tìtulos de que se ha formado: Es nuestra voluntad encargar à los Virreyes, Presidentes, y Audiencias el cuidado de mirar por ellos, y dar las òrdenes convenientes para que sean amparados, favorecidos, y sobrellevados, por lo que deseamos que se remedien los daños que padecen, y vivan sin molestia, ni vejaciòn, quedando esto de una vez assentado, y teniendo muy presentes las leyes de esta Recopilaciòn, que les favorecen, amparan, y defienden de cualesquier agravios, y que las guarden y hagan guardar muy puntualmente, castigando con particular y rigurosa demostraciòn à los transgresores. Y rogamos y encargamos à los Prelados Eclesiàsticos, que por su parte lo procuren como verdaderos padres espirituales de esta nueva Cristiandad, y todos los conserven en sus privilegios y prerogativas, y tengan en su protecciòn.

Ley XV.

Don Felipe II, en Madrid, à 7 de Noviembre de 1574.

Que los Indios en Filipinas no sean llevados por fuerza de unas Islas à otras.

Mandamos que en las Islas Filipinas los Indios no sean llevados de unas à otras para entradas por fuerza, y contra su voluntad, si no fuere en caso muy necesario, pagàndoles su ocupaciòn y trabajo, y que sean bien tratados y no reciban agravio.

Ley XXIII.

Don Felipe III, Ordenanza 10 del servicio personal de 1609.

Que à los Indios se señale tiempo para sus heredades, y granjerìas, y se procura que las tengan.

Justo es que à los Indios quede tiempo para labrar sus heredades, y las de Comunidad, y que los Virreyes y Gobernadores señalen el que hubieren menester, de forma que puedan acudir à sus granjerìas, procurando las tengan, con que seràn màs aliviados, y la tierra màs abastecida. Asì lo mandamos.

Ley XXVII.

Don Felipe II, en Aranjuez, à 24 de Mayo, à y 23 de Julio de 1571. En San Lorenzo, à 6, y en Madrid, à 18 de Mayo de 1572.

Que los Indios puedan vender sus haciendas con autoridad de justicia.

Cuando los Indios vendieren sus bienes raìces y muebles, conforme à lo que se les permite, tràiganse à pregòn en almòneda pùblica, en presencia de la Justicia, los raìces por tèrmino de treinta dìas, y los muebles por nueve dìas; y lo que de otra forma se rematare sea de ningùn valor y efecto; y si pareciere al Juez, por justa causa, abreviar el tèrmino, en cuanto à los bienes muebles lo podrà hacer. Y porque los bienes que los Indios venden ordinariamente, son de poco precio, y si en todas las ventas hubiesen de preceder estas diligencias, serìa causarles tantas costas como importaria el principal: Ordenamos, que esta ley se guarde y ejecute en lo que excediere de treinta pesos de oro comùn, y no en menor cantidad, porque en este caso bastarà que el vendedor Indio parezca ante algùn Juez ordinario à pedir licencia para hacer la venta, y constàndole, por alguna averiguaciòn que es suyo lo que quiere vender, y que no le es dañoso enajenarse de ello, le de licencia, interponiendo su autoridad en la escritura, que el comprador otorgare, siendo mayor, y capaz para el efecto.

Ley XXX.

El Emperador Don Carlos y el Principe Gobernador, en Madrid, à 14 de Mayo de 1546.

Que los Encomenderos no sucedan en las tierras vacantes por muerte de los Indios.

Los Encomenderos no puedan suceder en las tierras y heredamientos que hubieren quedado vacantes por haber muerto los Indios de sus Encomiendas sin herederos, ò sucesores, y en ellas sucedan los Pueblos donde fueren vecinos hasta en la cantidad que buenamente hubieren menester para paga y alivio de los tributos, que les fueren tasados, y algunas màs, y las otras que sobraren se apliquen à nuestro Patrimonio Real.

Ley XXXII.

Don Felipe II en el Pardo, à 16 de Abril de 1580.

Que los Indios tengan libertad en sus disposiciones.

Si algunos Indios ricos, ò en alguna forma hacendados estàn enfermos y tratan de otorgar sus testamentos, sucede, que los Curas y Doctrineros, Clèrigos, y Religiosos, procuran y ordenan que les dejen, ò à la Iglesia, toda, ò la mayor parte de sus haciendas, aunque tengan herederos forzosos, exceso muy perjudicial, y contra derecho: Mandamos à los Virreyes, Presidentes y Audiencias, que provean y den las òrdenes convenientes para que los Indios no reciban agravio y tengan entera libertad en sus disposiciones sin permitir violencias. Y encargamos à los Prelados Eclesiàsticos que no lo consientan, guardando la ley 9, titulo 13, lib. 1º.

Titulo III.

De las Reducciones y Pueblos de Indios.

Ley IX.

Don Felipe II, en Toledo, à 19 de Febrero de 1560.

Que à los Indios reducidos no se quiten las tierras, que antes hubieren tenido.

Con màs voluntad y prontitud se reduciràn à poblaciones los Indios, si no se les quitan las tierras y granjerìas que tuvieren en los sitios que dejaren: Mandamos que en esto no se haga novedad, y se les conserven como las hubieren tenido antes, para que los cultiven, y traten de su aprovechamiento.

Ley XXVI.

El Emperador Don Carlos, en Toledo, à 4 de Diciembre de 1528.

Que los caminantes no tomen à los Indios ninguna cosa por fuerza.

Ordenamos que en los Pueblo de Indios, Reducciones y estancias, no tomen los caminantes à los Indios contra su voluntad bastimentos, ni otras cosas, y si algo les vendieren, sea pagando el justo valor, y lo que de otra forma tomaren, haràn las Justicias satisfacer à los Indios, con el doblo, y mas el quatro tanto en pena, mitad para nuestra Càmara, y la otra dividida entre el Juez, y Acusador.

SIETE PARTIDAS.

Partida 2, Title 17.

Ley I.

Como deue el Rey ser guardado en sus cosas, quier sean muebles, o rayzes: por que las llaman assi.

Complidamente non puede ser guardado el Rey, si todas sus cosas non fuesen guardadas, por honra del. Onde, sin todas aquellas que auemos dicho, avn y ha otras, que queremos agora dezir, en que le deue el Pueblo guardar. E estas son aquellas, que son llamadas mueblos, e rayzes. E las muebles se entienden por aquellas, que biuen, e se maguer non son biuas, e se non pueden

por si mouer, pero mueuenlas. E las rayzes son las heredades, e las labores, que se non queden mouer en ninguna destas maneras, que dichas auemos. E destas heredades que son rayzes, las vnas son rayzes quitamente del Rey, assi como cilleros, o bodegas, o otras tierras de labores, de qual manera quier que sean, que ouiesse heredado, o comprado o ganado apartadamente para si. E otras y ha que pertenescan al Reyno, assi como Villas, e Castillos, o los otros honores, que por tierra los Reyes dan a los Ricos omes. Onde en todas estas cosas deue el Pueblo guardar al Rey, de manera que ninguno non sea osado de tomar por fuerca, nin de furtar, nin de encobrir ninguna dellas. Ca si en todo ome es deshonrra furtarle lo suyo, o forcargelo; quanto mas quien lo faze a su Rey, que es su senor. E demas es cosa muy desaguisada, en fazer los del Reyno al Rey, aquello de que ellos quieren ser guardados por el. E avn sin todo esto, el dano que le fiziessen, non seria solamente suyo, mas de todos aquellos a que el Rey es tenudo de frazer bien. Ca pues el ha mucho de complir e de dar en muchas maneras, menester ha otros, que aya de muchas partes de que lo pueda fazer, porque lo pueda fazer; e que le ayuden los omes a el, e non le estoruen. Onde por todas estas razones, qualquier que a sabiendas tomasse por fuerca, o furtasse las cosas muebles del Rey, segund Fuero antiguo de Espana, faria aleue conoscida: e si fuesse ome honrrado, e le tomassen en el fecho deue morir porende; e si non, ha de pechar diez tanto, como aquello que tomó e si non ouiere de que lo pechar, deue ser echado del Reyno por toda su vida. E si fuere de los otros, deue ser en prision del Rey, e seruirle por ello tanto tiempo, fasta que sea entregado de aquello que le tomo. Pero como quier que diximos, que faria aleue el que furtasse, o robasse el auer del Rey, tanto podria ser el furto, o el robo, en en tal manera, e en tal sazon fecho, que se tornaria en traycion conoscida. E porende, el que lo fiziesse deue auer pena por el aluedrio del Rey, segund qual ome fuere, e el robo, o el furto que fiziere, e la manera, e la sazon en que lo

ouiere fecho. E esto que diximos, se entiende del mueble. Mas si fuere rayz lo que encobriesse, o enajenasse alguno, tomandolo para si, o para otri sin mandado del Rey, o consentiesse que lo tomasse alguno, podiendolo vedar; si fuesse el que lo fiziesse de los omes mas honrados, deue perder la honor que touiere del Rey; e demas, hanle de tomar de la su heredad, tanto como aquello que encubrio, o enajeno, o el consintio a otri, que lo tomasse, e si non ouiere de que lo pechar, deuenlo echar del Reyno, por cuanto el Rey touiesse por bien. E si fuere otro ome, e ouiere de que lo pechar, hanle otor tanto de tomar de lo suyo, e deue ser metido en prision fasta tiempo senalado, segund el Rey touiere por bien. E si non ouiere de que lo pechar, deue morir por ello. E como quier que diximos de suso, que los que encubriessen, o enajenassen alguna heredad del Rey, que deuen auer pena, assi como sobredicho es, con todo esso, non deuen entender aquellos que la touieren, que han derecho en ella, nin que les deue fincar por esta razon, nin por tiempo que la ouiessen tenido. Porque las cosas que pertenescen al Rey, o al Reyno, non se pueden enajenar por ninguna destas razones.

Partida 3, Title 29.

Ley VII.

Como las placas, nin los caminos, nin las defesas, nin los exidos, nin los otros lugares semejantes, que son del comun del Pueblo, non se pierden por tiempo, e de las otras cosas.

Plaza, nin calle, nin camino, nin defesa, nin exido, nin otro logar qualquier semejante destos, que sea en vso comunalmente del Pueblo de alguna Cibdad, o Villa, o Castillo, o de otro Lugar, non lo puede ningund one ganar por tiempo. Mas las otras cosas que sean de otra natura, assi como sieruos, o ganados, o pegujar, o otras cosas qualesquier semejantes destas, maguer sean comunalmente del Concejo de alguna Cibdad, o Villa, bien se podria ganar por tiempo de quarenta anos. E esto es,

porque maguer que sean de todos comunalmente, no vsan comunalmente dellas todos, assi como de las otras cosas sobredichas. Empero si la Cibdad, o Villa, o otro Lugar, que pidiesse despues deste tiempo fasta quatro anos al Rey, o al Adelantado, o al Judgador del logar, que aquel tiempo passado non le empeciesse, e que le otorgasse, que la cosa non se perdiesse por el, deuegelo otorgar; e estonce non le empescera ninguna cosa el tiempo de los quarenta anos. Mas si los quatro anos passasen de mas de los quarenta, que lo non pidiessen assi, dende adelante non lo podrian pedir, e el que la cosa tuuiesse, ganarla y a por tiempo de los quarenta anos.

Ley XVIII.

Por cuanto tiempo se pueden ganar las cosas que son rayzes o incorporales.

Las cosas muebles de como se ganan por tiempo auemos mostrado fasta aqui. E agora queremos mostrar, e fablar de las otras cosas que son rayzes, o incorporales, como, e en que manera se pueden ganar por tiempo. E porende dezimos, que si algun ome rescibe de otro alguna cosa en buena fe, de aquellas que se non pueden mouer assi como por comprar, o por donadio, o por cambio, o por manda, o por alguna otra razon derecha; que si furer tenedor della diez anos, seyendo en la tierra el senor della, o veynte, seyendo en otra parte, que la puede ganar por este tiempo; maguer aquel de quien la ouiesse recebido, non fuesse verdadero senor: e dende adelante non es tenudo de responder por ella á ningun ome; maguer dixesse, que queria prouar, que el fuera verdadero senor della, e que non era sabidor que otro la ganasse por tiempo. E esto que dezimos en esta ley, la recibe, han buena fe, cuydando que lo pueden fazer; e aquel a quien passo, es tenedor della en paz, de manera que non gela demandan en todo aquel tiempo que el la puede ganar.

Ley XXI.

Como por tiempo de treynta anos puede ome ganar qual cosa quier que tenga, quier aya buena fe, quier non.

Treynta anos continuadamente, o dende arriba, seyendo algun ome tenedor de alguna cosa, por qual manera quier que ouiesse la tenencia, que non le mouiessen pleyto sobre ella en todo este tiempo, ganarla y a, maguer fuesse la cosa furtada, o forcada, o robada; e maguer que el senor della gela quisiesse demandar, dende adelante non seria tenudo de responderle sobre ella, amparandose por este tiempo. Pero si acaesciesse, que el fuesse desapoderado de la tenencia, perdiendola, o en otra manera, non le finca derecho para poderla demandar en juyzio a aquel a quien la fallasse; fueras ende, si aquel que la touiesse, la ouiesse furtada, o forcada, o robada a el mismo; o la ouiesse recebido del en manera de emprestamo, o de loguero. Ca estonce bien la podria demandar, e cobrar. Esso mismo dezimos que seria, si le ouiesse apoderado della algun Judgador, por mengua de respuesta de aquel que la auia ganada por este tiempo. Ca estonce, si viniesse fasta vn ano, e quisiesse responder a la demanda que auian mouido contra el, e pagar las costas, puedelo cobrar. Otrosi dezimos, que quando alguno fuere tenedor a buena fe de alguna cosa que sea rayz, por treynta anos, o mas, cuydando que era suya, o que fuera de su padre, o que la ouiera por otra razon derecha que la puede ganar por este tiempo, e ampararse por el contra todos quantos ge la quisieren demandar; e si acaeciesse, que perdiesse la tenencia della, puedela demandar a quien quier que la falle; fueras ende, si la fallasse el verdadero dueno della. Ca estonce, si el senor al cobrasse sin fuerca, e sin engane, e pudiesse prouar el senorio que auia sobre aquella cosa, non seria tenudo de gala dar.

Partida 6, Title 19.

Ley X.

Como las Eglesias, e los Reyes, e los Concejos, pueden demandar restitucion, por aquellas mismas razones que los menores.

Porque los bienes de las Eglesias, e de los Reyes, e de los Concejos se pierden, o se menoscaban, por culpa de los que los han a procurar, o por engano de los otros. E porende fue establescido antiguamente, que tales bienes ayan aquel preuillejo, e aquella mejoria que han las cosas de los menores de veynte e cinco anos. Onde los que han en poder, e en guarda, las cosas sobredichas, pueden demandar restitucion sobre cada vna dellas, quando se menoscabassen por tiempo, o por engano, o por negligencia de otri. E esto pueden demandar desde el dia que recibieron el engano, o el menoscabo fuesse tan grande, que montasse de mas de la meytad del precio, que valia alguna de las cosas sobredichas que fuesse enagenada, estonce bien puede demandar emienda, e restitucion, fasta treynta anos, desde el dia que fue fecho el enagenamiento de la cosa.

NOVISIMA RECOPILACION.

Libro XI.

Titulo VIII.

Ley IV.

Tiempo necesario para prescribir el Senorio de los pueblos, y su Jurisdiccion civil y criminal, à excepcion de la Suprema, y de los pechos y tributos pertenecientes al Rey.

Porque algunos en nuestros reynos tienen y poseen algunas ciudades, villas y lugares, y Jurisdicciones civiles y criminales, sin tener para ello título nuestro, ni de los Reyes nuestros antecesores, y se ha dudado, si lo suso dicho se puede adquirir contra Nos y nuestra

Corona por algun tiempo; ordenamos y mandamos, que la posesion inmemorial, probándose segun y como y con las calidades que la ley de Toro requiere, que es la ley 1, tit. 17, lib. 10, baste para adquirir contra Nos y nuestros sucesores qualesquier ciudades, villas y lugares, y Jurisdicciones civiles y criminales, y qualquiera cosa y parte dello, con las cosas al Senorio y Jurisdiccion anexas y pertenecientes; con tanto que el dicho tiempo de la dicha prescripcion no sea interrumpido, ni destajado por Nos, ó por nuestro mandado, ó otros en nuestro nombre, natural ó civilmente; pero la Jurisdiccion civil ó criminal Suprema, que los Reyes han por mayoría y poderío Real, que es la de facer y cumplir donde los otros Senores y Jueces la menguaren, declaramos, que esta no se pueda ganar ni prescribir por el dicho tiempo, ni por otro alguno: y asi mismo lo que las leyes dicen, que las cosas del Reyno no se puedan ganar por tiempo, se entienda de los pechos y tributos á Nos debidos.

JUSTINIAN CODE.

Lib. VII. Title 37, 1.

Imp. Constantinus A. ad Orphitum.

Notum est, a fisco quæstionem post quadriennium (continuum) super bonis vacantibus inchoandam non esse. Additum est, et eos qui nostra largitate nituntur, nulla inquietudine lacessendos: nec his a fisco nostro controversiam commovendam, qui quoquo modo aut titulo easdem res possederint.

Lib. VII. Tit. 38, 2.

Impp. Valentinianus, Theodosus et Arcadius, Aaa. Dextro comiti rerum privatarum.

Universas terras quæ a colonis sive emphyteuticariis dominici juris, rei publicæ, vel juris sacrorum templorum in qualibet provincia venditæ, vel ullo alio pacto alienatæ sunt ab iis qui perperam atque contra leges eas detinent, nulla longi tempus præscriptione officiente,

jubemus restitui; ita ut nec pretium quidem iniquis comparatoribus reposcere liceat.

Datum 3 nov. jul. Constantinop. Valentiniano A. IV et Eutroprio coss. 387.

Lib. VII. Tit. 39, 4.

Imp. Anastasius A. Matroniano, præfecto prætorio.

* * * Nullumque jus privatum vel publicum in quacunque causa vel quacunque persona, quod prædictorum quadraginta annorum extinctum est jugi silentio, moveatur. Sed quicunque super quolibet jure, quod per memoratum tempus inconcussum est, et sine ulla re ipso illata judiciaria contentione possedit * * *.

Lib. VII. Tit. 39, 6.

* * * Ideoque jubemus eos qui rem aliquam per continuum annorum quadraginta curriculum sine quadam legitime interpellatione possederint, de possessione quidem ni sin dominio nequaquam removeri.